



COUNCIL CHAMBERS

17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

COUNCIL MEMBERS	REDEVELOPMENT AGENCY
Dennis Kennedy, Mayor	Dennis Kennedy, Chair
Steve Tate, Mayor Pro Tempore	Steve Tate, Vice-Chair
Larry Carr, Council Member	Larry Carr, Agency Member
Mark Grzan, Council Member	Mark Grzan, Agency Member
Greg Sellers, Council Member	Greg Sellers, Agency Member

WEDNESDAY, JULY 6, 2005

AGENDA

JOINT MEETING

CITY COUNCIL SPECIAL AND REGULAR MEETING

and

REDEVELOPMENT AGENCY SPECIAL MEETING

6:00 P.M.

A Special Meeting of the City Council and Redevelopment Agency is Called at 6:00 P.M. for the Purpose of Conducting Closed Sessions.

Dennis Kennedy, Mayor/Chairman

CALL TO ORDER

(Mayor/Chairperson Kennedy)

ROLL CALL ATTENDANCE

(City Clerk/Agency Secretary Torrez)

DECLARATION OF POSTING OF AGENDA

Per Government Code 54954.2

(City Clerk/Agency Secretary Torrez)

6:00 P.M.

City Council Action and Redevelopment Agency Action

CLOSED SESSION:

1.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority:	Pursuant to Government Code 54956.9(a)
Case Name:	City of Morgan Hill v. Hernandez
Case Number:	Santa Clara County Superior Court, Case No. 1-04-CV-020063
Attendees:	City Manager, Interim City Attorney, and Attorney Gale Connor

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority	Government Code 54957
Public Employee Performance Evaluation:	City Manager
Attendees:	City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

RECONVENE

CLOSED SESSION ANNOUNCEMENT

7:00 P.M.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITION

Retiring Morgan Hill Unified School District Superintendent
Carolyn McKennan

PRESENTATION

Briefing on High Speed Rail Project
Laura Stuchinsky, Silicon Valley Leadership Group

CITY COUNCIL REPORT

Mayor Kennedy

CITY COUNCIL SUB-COMMITTEE REPORTS

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

OTHER REPORTS

PUBLIC COMMENT

NOW IS THE TIME FOR COMMENTS FROM THE PUBLIC REGARDING ITEMS NOT ON THIS AGENDA.

(See notice attached to the end of this agenda.)

PUBLIC COMMENTS ON ITEMS APPEARING ON THIS AGENDA WILL BE TAKEN AT THE TIME THE ITEM IS ADDRESSED BY THE COUNCIL. PLEASE COMPLETE A SPEAKER CARD AND PRESENT IT TO THE CITY CLERK.

(See notice attached to the end of this agenda.)

PLEASE SUBMIT WRITTEN CORRESPONDENCE TO THE CITY CLERK/AGENCY SECRETARY. THE CITY CLERK/AGENCY SECRETARY WILL FORWARD CORRESPONDENCE TO THE CITY COUNCIL/REDEVELOPMENT AGENCY.

City Council Action

CONSENT CALENDAR:

ITEMS 1-10 The Consent Calendar may be acted upon with one motion, a second and the vote, by each respective Agency. The Consent Calendar items are of a routine or generally uncontested nature and may be acted upon with one motion. Pursuant to Section 5.1 of the City Council Rules of Conduct, any member of the Council or public may request to have an item pulled from the Consent Calendar to be acted upon individually.

Time Estimate

Page

Consent Calendar: 1 - 10 Minutes

1. [**AWARD OF PROFESSIONAL SERVICES CONTRACT TO PREPARE CIVIL/URBAN DESIGN DOCUMENTS FOR DEPOT STREET RECONSTRUCTION PROJECT**](#).....8
Recommended Action(s): **Authorize** the City Manager to Execute a Consultant Agreement with BKF Engineers in the Amount of \$308,945 for the Preparation of Civil and Urban Design Documents for the Depot Street Reconstruction Project, Subject to Review and Approval by the City Attorney and Caltrans Pre-Award Audit Process.
2. [**PUBLIC WORKS MAINTENANCE AGREEMENT FOR WELL SITE EMERGENCY REPAIRS, MAINTENANCE AND PARTS FOR FISCAL YEAR 2005-2007**](#)9
Recommended Action(s):
 1. **Approve** New Maintenance Agreement for Emergency Repairs, Maintenance, and Parts for Well Sites; and
 2. **Authorize** the City Manager to Execute the Agreement on Behalf of the City.
3. [**AMEND PROFESSIONAL SERVICES CONTRACT FOR THE PREPARATION OF AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR BUTTERFIELD BOULEVARD**](#)10
Recommended Action(s):
 1. **Approve** Additional Scope of Work for David J. Powers and Associates in the Amount of \$5,000; and
 2. **Authorize** the City Manager to Execute an Amendment to the Existing Professional Services Agreement for Preparation of an Addendum to the 1992 Environmental Impact Report (SEIR) for the Purposes of Extending Butterfield Boulevard South from Tennant Avenue to Watsonville Road, Subject to Review and Approval by the City Attorney.

Time Estimate
Consent Calendar: 1 - 10 Minutes

Page

4. [AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS INSPECTIONS ON AN AS-NEEDED BASIS](#)11
Recommended Action(s):
 1. **Approve** a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Inspection Services on an As-Needed Basis at a Not-to-Exceed Cost of \$90,000 for Fiscal Year 2005-2006; and
 2. **Authorize** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.

5. [APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH EURORAFT DEVELOPMENT, INC. \(APN 773-08-012\)](#)12
Recommended Action(s):
 1. **Approve** Subdivision Agreement and Improvement Plans;
 2. **Authorize** the City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and
 3. **Authorize** the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.

6. [RESPONSE TO 2004-2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT "TASERS-TRAINING AND TRACKING"](#)14
Recommended Action(s): **Direct** Staff to Provide the 2005-2005 Santa Clara County Civil Grand Jury with the responses contained in the staff report.

7. [ADOPT ORDINANCE NO. 1727, NEW SERIES](#)15
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1727, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1685, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/SPEER TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012) (DAA-98-11: SPRING-MALONE/SPEER).**

8. [ADOPT ORDINANCE NO. 1728, NEW SERIES](#)19
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1728, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-25: COCHRANE – LUPINE (APN 728-34-022) (DA-05-02: COCHRANE - LUPINE).**

9. [ADOPT ORDINANCE NO. 1729, NEW SERIES](#)22
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1729, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1718, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA).**

Time Estimate
Consent Calendar: 1 - 10 Minutes

Page

10. [ADOPT ORDINANCE NO. 1730, NEW SERIES](#)26
Recommended Action(s): **Waive** the Reading, and **Adopt** Ordinance No. 1730, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE. (APN's 817-06-039, 040 & 41) (ZAA-01-20: Tennant Safeway).**

Redevelopment Agency Action

CONSENT CALENDAR:

ITEMS 11-12

Time Estimate
Consent Calendar: 1 - 10 Minutes

Page

11. [AGREEMENT FOR OUTSIDE LEGAL COUNSEL \(RICHARDS, WATSON & GERSHON\)](#)37
Recommended Action(s): **Authorize** the Executive Director to Execute a Consultant Agreement for Legal Services in Fiscal Year 2005-2006 with Richards, Watson & Gershon in the Amount of \$75,000, Subject to Review and Approval by Agency Counsel.
12. [CONSULTANT AGREEMENT WITH BENCHMARK](#)38
Recommended Action(s): **Authorize** the Executive Director to Negotiate and Execute a Consultant Services Agreement with Benchmark for Fiscal Year 2005-2006 to Provide Project Management Services and Lead Testing for Housing Improvement Programs in an Amount not to exceed \$402,500; Subject to Review and Approval by Agency Counsel.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

ITEMS 13-14

Time Estimate
Consent Calendar: 1 - 10 Minutes

Page

13. [APPROVE REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 15, 2005](#)40
14. [APPROVE SPECIAL AND REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 22, 2005](#)70

City Council Action

PUBLIC HEARINGS:

	Time Estimate		Page
15.	20 Minutes	<u>FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2005-2006 ASSESSMENT INCREASES PURSUANT TO PROPOSITION 218</u>	83
		Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <u>Adopt</u> 16 Resolutions Declaring the Results of the Ballot Proceedings for Each Sub-Area; and Action- <u>Adopt</u> the Resolution Ordering the Levy of Assessments and Approving the Amended Engineer's Report.	
16.	30 Minutes	<u>APPLICATION ZA-05-04: TEXT AMENDMENT – RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) STANDARDS AND CRITERIA</u>	119
		Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <u>Motion to Waive</u> the Reading in Full of Ordinance. Action- <u>Motion to Introduce</u> Ordinance by Title Only. (Roll Call Vote)	
17.	10 Minutes	<u>SOLID WASTE PROGRAM CHANGES</u>	174
		Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <u>Authorize</u> the City Manager to Execute the Franchise Agreement Subject to the Review and Approval of the City Attorney.	

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

	Time Estimate		Page
18.	10 Minutes	<u>DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH EL TORO BREWING</u>	215
		Public Hearing Opened. Please Limit Your Remarks to 3 Minutes. Public Hearing Closed Council Discussion. Action- <u>Adopt</u> Resolutions Approving the DDA and Authorizing the Executive Director to Execute the Agreement, Including Making Non-Material Modifications, Subject to Review and Approval by Agency Counsel.	

City Council Action

OTHER BUSINESS:

	Time Estimate		Page
19.	10 Minutes	<u>RECRUITMENT OF CITY ATTORNEY</u>	222
		<u>Recommended Action(s):</u>	
		1. <u>Consider</u> Whether to Recruit for a Full Time City Attorney; and	
		2. <u>Provide</u> Direction on the Process and Schedule.	
20.	15 Minutes	<u>BOARD AND COMMISSION INTERVIEW AND APPOINTMENT PROCESS</u>	224
		<u>Recommended Action(s):</u> <u>Consider</u> the Mayor's Fundamental Principles to Guide the	
		Board and Commission Recruitment, Interview and Appointment Process.	

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

ADJOURNMENT



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 6, 2005*

AWARD OF PROFESSIONAL SERVICES CONTRACT TO PREPARE CIVIL/URBAN DESIGN DOCUMENTS FOR DEPOT STREET RECONSTRUCTION PROJECT

RECOMMENDED ACTION(S): Authorize the City Manager to Execute a consultant agreement with BKF Engineers in the amount of \$308,945 for the preparation of civil and urban design documents for the Depot Street Reconstruction Project, subject to approval by the City Attorney and Caltrans Pre-Award Audit Process.

EXECUTIVE SUMMARY: The Depot Street Reconstruction Project is funded by a Transportation for Livable Communities (TLC) Capital Grant through Metropolitan Transportation Commission (MTC). The scope of the project is to reconstruct Depot Street in conformance with the City's Downtown Plan from Main Avenue to 5th Street. This includes wide, tree-lined sidewalks on the east side of the street; planting strip and sidewalks on the west; bicycle lanes on both sides of the street; pedestrian-scaled street lighting; special paving at street intersections; narrow traffic lanes; median islands approaching 2nd and 3rd Streets; and additional street landscaping; public art and street furniture.

The consultant's scope of work consists of civil & urban design, completion of design development work, agency approvals, and preparation of plans, specifications and contract documents for the bidding and construction for this project. The \$308,945 proposal from BKF Engineers provides for BKF Engineers to perform the majority of the work, and they will be assisted by their subconsultants, David L. Gates and Associates (Urban Design), Parikh Consultants (Geotechnical), Alliance Engineering (Electrical), and Aero-Geodetic (Aerial Photo and Mapping).

Staff engaged in a thorough and comprehensive request-for-proposals process before selecting BKF Engineers. Ten proposals were initially received and scrutinized by a team of staff members. The top four firms were then invited to interview and formally present their proposals. While all four firms were highly qualified to perform the work, BKF Engineers stood out as the most qualified. The criteria used to evaluate the candidates included qualifications and experience of personnel, experience with similar projects, ability to shepherd the project through the MTC process, and ability to meet the City's schedule. Staff feels BKF Engineers is highly qualified to perform this work and recommends an award of contract to them.

The estimated timeframe for design is approximately 9 months and a design schedule is attached. Plans will be submitted for review to MTC at the 30%, 60%, 90%, and 100% stages. 100% Completed plans, specification, and estimates will be submitted to MTC by March 31, 2006. It is anticipated that construction will begin in the summer of 2006 and be complete before the end of that year.

FISCAL IMPACT: The project is funded in the 2005-2006 Capital Improvement Program budget under Depot Street Reconstruction, Project #539005 with the budget of \$2,968,000. The City will be reimbursed \$2,626,000 through the TLC Grant.

Agenda Item #1

Prepared By:

Assistant Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 6, 2005

PUBLIC WORKS MAINTENANCE AGREEMENT FOR WELL SITE EMERGENCY REPAIRS, MAINTENANCE AND PARTS FOR FY 2005/2007

RECOMMENDED ACTION(S):

1. Approve new maintenance agreement for emergency repairs, maintenance, and parts for well sites.
2. Authorize the City Manager to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY: A Request for Proposal process was held in order to award a new agreement for maintenance services at the City well sites. The current agreement ends on June 30, 2005. The proposals received were from the companies listed below:

Maggiora Brothers Drilling, Inc.
Salinas Pump Company

Maggiora Brothers Drilling, Inc. provided the lowest hourly rates as well as a two hour maximum response time. Given a supplemental case scenario, they provided a lower cost. Staff recommends approval of the attached agreement at \$60,000 per year for two years based upon the rates and response time submitted.

FISCAL IMPACT: Contingent upon Council approval, funding exists for this agreement in the FY 2005/06 Water Division budget.

Agenda Item # 2

Prepared By:

Management Analyst

Approved By:

Department Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 6, 2005

AMEND PROFESSIONAL SERVICES CONTRACT FOR THE PREPARATION OF AN ADDENDUM TO THE FINAL ENVIRONMENTAL IMPACT REPORT FOR BUTTERFIELD BOULEVARD

RECOMMENDED ACTION(S):

Approve additional scope of work for David J. Powers and Associates in the amount of \$5,000 and authorize the City Manager to execute an amendment to the existing professional services agreement for preparation of an Addendum to the 1992 Environmental Impact Report (SEIR) for the purposes of extending Butterfield Boulevard south, from Tennant Avenue to Watsonville Road, subject to approval by the City Attorney.

EXECUTIVE SUMMARY:

On March 2, 2005, City Council awarded a professional services contract to David J. Powers in the amount of \$24,950 to update the existing 1992 EIR, so that the City can establish the needed right-of-way boundaries to extend Butterfield Boulevard to Watsonville Road. The scope of work includes attending meetings and hearings, and preparing the addendum. Primary focus issues include; Transportation, Noise, Cultural Resources, Biological Resources, Agricultural Resources, Water Quality and Land Use. The original scope of work included collecting data to identify all historic structures in the proposed alignment path for the extension of Butterfield Boulevard.

It was known previously that staff would have to provide additional Historic Resources Evaluation Reports for any identified historic structure; however, until the preliminary analysis was completed, it was not known how many structures would require these evaluations. Twenty structures were identified within the overall alignment with five requiring further studies to determine their historic impact. David J. Powers and Associates recommends that staff perform these studies sooner rather than later so as to make preparations for their relocation if determined necessary. David J. Powers and Associates will use the services of Bonnie Bamburg, a consultant who specializes in this line of work to prepare these special reports. This work will complete the Addendum to the 1992 EIR and will allow the City to proceed with developing and recording a Plan Line for the Butterfield Boulevard extension. The attached proposal provides a more detailed explanation of the fee estimate and Scope of Services for the project.

FISCAL IMPACT:

Funds totaling \$105,000 are budgeted this fiscal year for Plan Line of Major Streets (CIP #501093) from the Traffic Impact Fee Fund (309). With the addition of this work (\$5,000) the total amended contract becomes \$29,950.

Agenda Item #3

Prepared By:

Associate Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: July 6, 2005

**AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS
INSPECTIONS ON AN AS-NEEDED BASIS**

RECOMMENDED ACTION(S):

1. Approve a Professional Services Contract with Testing Engineers, Inc. (TEI) to provide public works inspection services on an as-needed basis at a not-to-exceed cost of \$90,000 for FY 05-06.
2. Authorize the City Manager to execute the contract, subject to review and approval from the City Attorney.

EXECUTIVE SUMMARY: As in the past years, public improvement construction activity is at a level that requires inspection services over and above the capacity of the City's two full-time inspectors. This agreement will provide for contract public works inspections on an as needed basis to ensure that all public improvements associated with development and CIP projects are installed properly and that delays in the construction projects are minimized.

TEI was selected due to their ability to provide services that other inspection companies were unable to provide, namely compaction testing and daily public works related inspections. Furthermore, TEI has a certified soils, asphalt and concrete laboratory to assist the inspectors with complicated field conditions related to the installation of improvements in the public right-of-way. The final cost was negotiated to include inspection services and the use of a specialized soils compaction gauge. TEI has been providing these services on a contract basis for the past five years.

The contract inspectors will be used to assist City staff throughout the year. The funds to pay for these services will be collected from the fees paid for land development processing or from budgeted CIP project accounts.

FISCAL IMPACT: The cost for the contract inspection services is \$90,000 and will be funded from FY 05/06 Contract Services sub-account in the Public Works Community Development Engineering and Public Works Capital Improvement Program accounts. The contract costs are split with 50% assigned to Fund 206.5410.42231 and 50% assigned to Fund 745.8280.42231.

Agenda Item # 4

Prepared By:

**Deputy PW Director -
Engineering**

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 6, 2005

APPROVAL OF SUBDIVISION IMPROVEMENT AGREEMENT WITH EUROCRAFT DEVELOPMENT, INC. (APN 773-08-012)

RECOMMENDED ACTION(S):

- 1) Approve subdivision agreement and improvement plans
- 2) Authorize the City Manager to sign the Subdivision Improvement Agreement on behalf of the City
- 3) Authorize the recordation of the map and the Subdivision Improvement Agreement following recordation of the Development Improvement Agreement

EXECUTIVE SUMMARY: This is a 4 lot residential subdivision located at the west side of Dewitt Avenue between Spring Avenue and West Dunne Avenue (see attached location map). Subdivider has filed a Subdivision Map and supporting documents for the subdivision known as Lands of Latala. The Tentative Subdivision Map was approved on April 21, 2004 by the City's Community Development Department. A condition of approval of the Parcel Map was that certain improvements be installed by the Subdivider as shown on the approved Subdivision Improvement Plans for assessor's parcel number 773-08-012.

The developer has furnished the City with the necessary documents to complete the processing of the Parcel Map and has made provision with the City to provide bonds guaranteeing the completion of public improvements prior to recordation of the Parcel Map. Staff recommends that City Council approve the Subdivision Improvement Agreement and authorize the City Manager to sign on behalf of the City.

The developer has furnished the City with the necessary documents to complete the processing of the Parcel Map and has made provision with a Title Company to provide the City with the required fees, insurance and bonds prior to recordation of the Parcel Map.

FISCAL IMPACT: Development review for this project is from development processing fees.

Agenda Item #5

Prepared By:

Senior Engineer

Approved By:

Public Works Director

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT

MEETING DATE: July 6, 2005

RESPONSE TO 2004 – 2005 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT “TASERS – TRAINING AND TRACKING”

RECOMMENDED ACTION(S):

Direct Staff to provide the 2004-2005 Santa Clara County Civil Grand Jury with the subsequent responses.

EXECUTIVE SUMMARY:

The 2004-2005 Santa Clara County Civil Grand Jury (Grand Jury) released the attached report on “Tasers – Training and Tracking” on April 28, 2005. The report is a result of a survey of twelve law enforcement agencies in the County. The survey gathered information about each agency’s use of the Taser, training for use and experiences in using the device. At the time of the report six agencies, including Morgan Hill Police Department, employed the use of the Taser as a less than lethal force option. The Morgan Hill Police Department issues the X26 Taser to all field personnel and has adopted General Order 3.72 “The Use of Conducted Energy Device (Taser)”. General Order 3.72 outlines the qualifications to carry a Taser; instances when the Taser may be deployed; circumstances of general prohibited use; a post deployment procedure; maintenance, care and dataport tracking; and, documentation of use. Several members of the Police Department are certified Taser Instructors.

The City is required pursuant to Penal Code § 933.05(a) to respond to each applicable Grand Jury “Finding” and to respond to each applicable Grand Jury “Recommendation” per Penal Code § 933.05(b). The Penal Code is specific as to the responses offered. Staff recommends the following responses:

Finding 1

Guidelines for taser training, usage and tracking are not coordinated among law enforcement agencies in Santa Clara County.

Staff agrees that this finding is true, but believes that coordination of training usage and tracking of Tasers is unnecessary. Staff believes each police department in Santa Clara County should be responsible for its own use of Tasers, just as they are for all other tools of force, such as firearms, batons and OC spray.

Recommendation 1a

Law enforcement agencies in Santa Clara County should create a professional forum which meets on a regular basis to share and evaluate agency training and experience with tasers.

Although Staff does not necessarily agree with this concept, it is certainly not a bad idea. Staff is willing to propose this idea at a future meeting of the Santa Clara County Police Chiefs’ Association.

Recommendation 1b

Law enforcement agencies in Santa Clara County should establish defined protocols and guidelines for using tasers, including tracking any use of tasers.

The recommendation has been implemented. In Morgan Hill Staff developed and implemented General Order 3.72 in January 2005. This General Order serves as a guideline for the use and tracking the use of the conducted energy device (Taser).

FISCAL IMPACT: None

R:\ADMIN\City Council\04-05CivilGrJuryTaserResponse.doc

Agenda Item #6

Prepared By:

(Management Analyst)

Approved By:

(Chief of Police)

Submitted By:

City Manager



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 6, 2005

Agenda Item #7

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1727, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1685, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/SPEER TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCA COMPETITION. (APN 767-53-012)
(DAA-98-11: SPRING-MALONE/SPEER)**

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1727, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 15, 2005, the City Council Introduced Ordinance No. 1727, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1727, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1685, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/SPEER TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCA COMPETITION. (APN 767-53-012) (DAA-98-11: SPRING-MALONE/SPEER)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. the Planning Commission pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 6 building allotments for FY 1999-2000 to application **MP-97-22: Spring-Malone**; and

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Based on the findings required in Section 18.78.125 of the Municipal Code, the City Council hereby approves the development agreement amendment to allow for a one-year Exception of Loss of Building Allotment for the single Measure P unit, extending the deadline to commence construction from June 30, 2005 to June 30, 2006 as shown in “Exhibit A”.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of June 2005, and was finally adopted at a regular meeting of said Council on the Day of July 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

EXHIBIT "B2" OF PROJECT DEVELOPMENT AGREEMENT

DEVELOPMENT SCHEDULE		
MP-97-22: Spring-Malone and MP 98-17: Spring-Malone		
FY 2001-02, 5 allotments		

I.	SUBDIVISION AND ZONING APPLICATIONS	
	Applications Filed:	09-22-98
II.	SITE REVIEW APPLICATION	
	Application Filed:	10-01-99
III.	FINAL MAP SUBMITTAL	
	Map, Improvements Agreement and Bonds:	02-01-02
IV.	BUILDING PERMIT SUBMITTAL	
	Submit plans to Building Division for plan check:	02-01-02
V.	BUILDING PERMITS	
	Obtain Building Permits, Commence Construction:	06-30-05 6-30-06

Failure to obtain building permits and commence construction by the date listed in Section V above, shall result in the loss of building allocations. Failure to submit a Final Map Application or a Building Permit Submittal, Sections III. and IV. respective, six (6) or more months beyond the filing dates listed above shall result in applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additional, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above, Sections III. and IV. respectively, may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 11 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



CITY COUNCIL STAFF REPORT
MEETING DATE: JULY 6, 2005

Agenda Item # 8

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1728, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-25: COCHRANE – LUPINE (APN 728-34-022) (DA-05-02: COCHRANE - LUPINE)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1728, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 15, 2005, the City Council Introduced Ordinance No. 1728, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

None. Filing fees were paid to the City to cover the cost of processing this application.

ORDINANCE NO. 1728, NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORGAN HILL APPROVING A
DEVELOPMENT AGREEMENT FOR APPLICATION
MC-04-25: COCHRANE – LUPINE (APN 728-34-022)
(DA-05-02: COCHRANE - LUPINE)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 05-17, adopted March 1, 2005, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MC-04-25: Cochrane – Lupine	18 units (Fiscal Year 2006-07)
(Peet – Lupine Investors)	6 units (Fiscal Year 2007-08)
	12 units (Fiscal Year 2008-09)

SECTION 4. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill.

These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 5. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 6. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of June 2005, and was finally adopted at a regular meeting of said Council on the Day of July 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1728, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 6, 2005

Agenda Item #9

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1729, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1718, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1729, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 15, 2005, the City Council Introduced Ordinance No. 1729, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1729, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1718, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) (DA-04-04: HILL - GERA)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. The Planning Commission, pursuant to Title 18, Chapter 18.78.125 of the Municipal Code and Resolution No. 04-35, adopted March 24, 2004, has awarded allotments to a certain project herein after described as follows:

<u>Project</u>	<u>Total Dwelling Units</u>
MP-02-17: Hill – Gera	6 allotments for Fiscal Year 2004-05
	3 allotments for Fiscal Year 2005-06

SECTION 4. The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 5. EXCEPTION TO LOSS OF BUILDING ALLOCATION. The project applicant has, in a timely manner, submitted necessary planning applications to pursue development. Based on the findings required in Section 18.78.125 of the Municipal Code, the City Council hereby approves the development agreement amendment to allow for an Exception of Loss of Building Allotment for the single Measure C unit, extending the deadlines for building permit submittal from March 31, 2005 and January 31, 2006 to April 30, 2006; obtaining building permits from May 15, 2005 to June 30, 2006; and commencement of construction from June 30, 2005 and June 30, 2006 to September 30, 2006 and June 30, 2007 respectively.

SECTION 6. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 7. Effective Date Publication. This ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of June 2005, and was finally adopted at a regular meeting of said Council on the Day of July 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

⌘ CERTIFICATE OF THE CITY CLERK ⌘

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1729, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Exhibit A

EXHIBIT "B" OF DEVELOPMENT AGREEMENT

**DEVELOPMENT SCHEDULE MP-02-17: HILL – GERA
FY 2004-05 (6 units), FY 2005-06 (3 units)**

- I. SUBDIVISION AND ZONING APPLICATIONS**
Applications Filed: August 10, 2004
- II. SITE REVIEW APPLICATION**
Application Filed: August 10, 2004
- III. FINAL MAP SUBMITTAL**
Map, Improvements Agreement and Bonds: March 31, 2005
- IV. BUILDING PERMIT SUBMITTAL**
Submit plans to Building Division for plan check:
FY 2004-05 (6 units) ~~March 31, 2005~~ **April 30, 2006**
FY 2005-06 (3 units) ~~January 31, 2006~~ **April 30, 2006**
- V. BUILDING PERMITS**
Obtain Building Permits:
FY 2004-05 (6 units) ~~May 15, 2005~~ **June 30, 2006**
FY 2005-06 (3 units) March 31, 2007
- Commence Construction:
FY 2004-05 (6 units) ~~June 30, 2005~~ **September 30, 2006**
FY 2005-06 (3 units) ~~June 30, 2006~~ **June 30, 2007**

Failure to obtain building permits and commence construction by the dates listed above, shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit six (6) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least five (5) dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 6, 2005

Agenda Item #10

Prepared By:

Deputy City Clerk

Approved By:

City Clerk

Submitted By:

City Manager

ADOPT ORDINANCE NO. 1730, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE. (APN's 817-06-039, 040 & 41) (ZAA-01-20: Tennant Safeway)

RECOMMENDED ACTION(S):

Waive the Reading, and **Adopt** Ordinance No. 1730, New Series, and **Declare** That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

EXECUTIVE SUMMARY:

On June 15, 2005, the City Council Introduced Ordinance No. 1730, New Series, by the Following Roll Call Vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

FISCAL IMPACT:

No budget adjustment required.

ORDINANCE NO. 1730, NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE. (APN's 817-06-039, 040 & 41) (ZAA-01-20: Tennant Safeway)

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

- SECTION 1.** The proposed zoning amendment hereby amends Ordinance No. 1546 New Series, and is consistent with the Zoning Ordinance and the General Plan.
- SECTION 2.** The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.
- SECTION 3.** The PUD amendment is exempt pursuant to CEQA section 15301-existing structures.
- SECTION 4.** The City Council hereby approves an amendment to the precise development plan adopted as Figure I as part of Ordinance 1546. The proposed amendment will allow for a 8,586 sq. ft. increase in the size of the movie theater facility as shown on the attached set of plans dated April 1, 2005 on file in the Community Development Department. These documents, as amended by site and architectural review, show the exact location and size of the theater expansion. All other aspects of the development plan approved as part of Ordinance No. 1546, New Series shall remain in affect.
- SECTION 5.** The Council finds that the changes incorporated by Exhibit "A" are necessary to comply with the minimum zoning requirements as set forth in Chapter 18.30 of the Municipal Code (Zoning Code).
- SECTION 6.** The amendment to precise development plan shall be subject to the following:
1. Prior to the issuance of a building permit for the theater expansion, site, architectural and landscape plans shall be reviewed and approved by the Architectural and Site Review Board. The landscape improvement plans shall include all landscape improvements directly behind the theater building and all perimeter and parking lot landscaping located on the south side of the theater up to and including the Vineyard Blvd. driveway.

2. A detached sidewalk, not adjacent to the building, shall be installed along Vineyard Blvd. connecting the pedestrian path proposed on the north side of the theater to the pedestrian path on the south side of the theater.
3. The van accessible handicap parking stall shall be replaced in a location to be reviewed and approved by the Chief Building Official.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 15th Day of June 2005, and was finally adopted at a regular meeting of said Council on the Day of July 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1730, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT A

Tennant Station Shopping Center

PLANNED UNIT DEVELOPMENT (PUD) GUIDELINES

I. PUD SITE PLAN

- A. The project site for this PUD is illustrated in Figure 1. All new or remodeled development within this delineated area shall be required to meet the standards described herein.
- B. Proposed building foot prints illustrated in Figure 1. may be modified, so long as those modifications meet standard site development requirements.

II. ALLOWED USES/GENERAL PROVISIONS

- A. Permitted uses listed in the General Commercial (CG) Zoning District (Chapter 18.22) shall be allowed in the PUD. Conditional uses listed in the CG zoning district will still be considered conditional uses and would require conditional use permit approval prior to issuance of a business license.
- B. The following existing uses shall be allowed on specific locations and sizes shown on Figure 1. Any enlargement or relocation of the following uses will require amendment to the PUD.
 - Bowling Alley 26,525 sq. ft.
 - Movie Theater **31,600 sq. ft.**
 - Fitness Center 24,708 sq. ft.
- C. In the event that an existing use changes, either through a business license application or through a conditional use permit, the Community Development Department may require a parking utilization study prior to issuance of a permit or license to determine if the site provides adequate parking for the new use.
- D. All plans shall be subject to architectural and site review approval by the City of Morgan Hill Architectural Review Board (ARB).
- E. All public improvements necessary to support the shopping center or a use within the shopping center shall be completed prior to occupancy of the supermarket.
- F. A public restroom(s) shall be provided at the fuel center.

- G. An “Exit Clause” shall be recorded prior to the issuance of a building permit for the construction of a fuel center. The language for the “Exit Clause” shall be to the review and approval of the City Attorney. The “Exit Clause” shall include some form of surety to guarantee the removal of the fuel center use if abandoned by Safeway and a new operator is not found within a one year period. The Planning Commission may approve up to two, one-year extensions upon receipt of documentation of a pending agreement with a new operator or other indication of potential sale or reuse.
- H. One year after the opening of the grocery store, a review shall be completed by the Police Department to assess the safety of the Vineyard Boulevard drive aisle. If additional safety improvements are deemed necessary, by the Planning Commission, after conducting a public hearing, may require the owner to install safety improvements to mitigate the identified safety hazards. Examples of such improvements are speed control devices such as speed bumps or stop signs. Safety improvements would not require any change to the size of the buildings.

III. DESIGN

A. THEME

1. General aesthetic character of the building exteriors shall be architecturally compatible. Exterior materials and colors shall be consistent throughout the center.

a.

A. SITE DEVELOPMENT

1. General Information

- a. Site development shall adhere to the following Municipal Code Sections, unless specific deviation is addressed elsewhere in this document
 1. Section 18.22.040, with respect to setbacks, minimum lot size, building coverage, and height restrictions. (Site Development Standards for the CG Zoning District)
 2. PUD, Planned Unit Development District, Chapter 18.30
 3. Flood Damage Prevention, Chapter 18.42
 4. Commercial and Industrial Performance Standards, Chapter 18.48
 5. Off-Street Parking and Paving Standards, Chapter 18.50
 6. Exceptions and Modifications, Chapter 18.56
 7. Design Review, Chapter 18.74
 8. Signs, Chapter 18.76

2. Site Planning

a. Trash Enclosures

1. Trash enclosures shall be constructed in accordance with design guidelines developed in the Architectural Review Handbook.

2. Trash enclosures shall be located in areas which would minimize visual impact from the public right of way.
3. Shrubs and vine planting shall be provided to screen utilities and trash enclosures.
4. In the event that excessive trash begins to accumulate, the City may require the owner to arrange for additional refuse pick-up.
5. All refuse bins shall be kept within trash enclosures.
6. The trash enclosure at the gas station site shall be moved back behind the kiosk. All trash enclosures shall be located out of public view to the greatest extent possible.
7. A trash enclosure shall be placed on Pad 5 and shall be constructed with a shade trellis.

b. Fences and Walls

1. Walls shall be designed to be compatible with the surrounding landscape and architectural concept.
2. Compressors shall be screened by a wall and shall be located below the fascia and/or roof line of the building. Further, they shall be located on the rear or hidden side of the building and shall be painted to match the surface to which attached, if that surface is visible.

c. Parking and Loading/Circulation

1. All parking shall be screened from public view through the use of berming, hedge row planting, shrubs, trees, fences or walls, or any combination thereof. At the time of installation plantings shall be a minimum of 15 gallon trees and 5 gallon shrubs
2. Vertical and horizontal sight lines should be sufficient to ensure safe vehicular, as well as pedestrian movement.
3. Parking shall be screened from roadways.
4. No angled parking or one way drive aisles shall be utilized in new or revised parking lots.
5. Access to the property and circulation thereon should be safe and convenient for pedestrians, cyclists and vehicles.
6. Cross access easements shall be provided throughout the PUD.
7. Dead end drive aisles shall be eliminated and avoided where ever possible.
8. All main drive aisles within the PUD shall be a minimum of 30 ft. in width at the project's entrances/exits
9. Adequate auto stack-up areas of at least 40 ft. shall be designed to permit a minimum of two cars to enter the parking lot area without obstructing either street through traffic or vehicle backup areas within the parking lot.
10. The drive aisles along the Tennant Avenue and Monterey Road frontage (from the first driveway to the corner) shall be reduced to 25 ft. and the excess area added to the perimeter landscaping in order allow for berming within the landscape area. The objective is to add approximately 8ft. to the

Monterey Road side and approximately 5 ft. to the Tennant Avenue side.

a. Walkways

1. Parking areas shall be designed to include provision for pedestrian walkways to provide access to building entrances.
2. Walkways that cross traffic lanes shall have special design features such as raised and/or textured pavement, narrowed roadway, or combination thereof.
3. Walkways shall be provided through landscaped areas to protect landscaping from foot traffic damage.
4. The overall design of the project shall allow for safe and a free unrestricted flow of vehicular flow and pedestrian traffic from one lot to another.
5. Access to property and circulation shall be safe and convenient for pedestrians and vehicles.
6. Vertical and horizontal sight lines shall be sufficient to ensure safe vehicular and pedestrian movements.
7. In order to facilitate vehicle and pedestrian safety, walkways shall extend a minimum of 5 ft. past a building or architectural feature.

e. Merchandise Loading and Deliveries

1. Two (2) off-street loading spaces (each space measuring at least twelve feet wide, forty feet long and fourteen feet high exclusive of necessary area for maneuvering, ingress and egress) shall be provided for the supermarket or any other use that requires frequent or large deliveries.
2. Loading areas shall be screened from view by a solid wall. The wall shall be architecturally treated and screened with landscaping.
3. Loading areas shall not be located adjacent to or visible from a public right of way.

C. ARCHITECTURE

1. General Provisions

1. No building within the PUD shall exceed 30 feet in height. Exception to the maximum height limitation may be granted through the minor exception process.
2. Materials, textures, colors and details shall be compatible with those used though out the shopping center.
3. All commercial buildings shall be one-story in appearance and shall contain a full roof element.
4. Any outdoor storage of goods, material or equipment shall be limited to 8 ft. in height and screened from view of any roadway or adjacent property. The screening shall be designed as on integral part of the building design and site layout.
5. No franchise architecture shall be permitted.
6. Building design shall be compatible with the immediate environment and

provide harmonious transition between various uses.

2. Roof and Eve Elements

- a. Roof materials shall be consistent throughout the shopping center.
- b. No visual flat roof lines shall be allowed.
- c. Mechanical and utility equipment shall be located below the roof line or parapet wall and out of public view. Location within the building or at ground level is preferred to roof-mounting. When such equipment cannot be so located, all roof-mounted mechanical equipment or duct work which project vertically above the roof or roof parapet shall be screened by an enclosure which is detailed consistently with the building design.
- d. Compressors shall be screened by a wall or fence and be located below the fascia and/or roof line of the building. Further, they shall be located on the rear or hidden side of the building and shall be painted to match the surface to which attached, if that surface is visible.
- e. No mechanical equipment is to be exposed on the wall surface of a building.

3. Elevations and details

- a. Colors of windows and window frames shall be consistent throughout the center.
- b. All exterior wall elevations visible from and/or facing roadways shall have architectural treatment. No building surface fronting on a street shall have a flat, void surface without architectural treatment.
- c. Structures shall incorporate breaks in horizontal planes by stepping or staggering setbacks and recessing windows and entrances, to provide substance and scale.
- d. Doors and windows shall be enhanced by use of various sizes and shapes, and highlighted by the use of accent trim (e.g., molding, or wood trim).
- e. The design shall be complementary to the existing architectural style of the shopping center.
- f. Gutters and down spouts shall be designed interior to the walls when adjacent to a street or drive aisle frontage. All other gutters and down spouts that are located exterior to the wall shall be treated to blend into the facade to which it is attached.
- g. Facade architectural treatment shall be applied to all building elevations with the same degree of detail as the building entrance.
- h. The Architecture and Site Review Board shall study the possibility of including some kind of public art or mural on the east elevation of the Safeway building.

D. LANDSCAPING

1. General Provisions

- a. Design criteria for landscaping shall be consistent throughout the PUD.
- b. All existing mature landscaping shall be maintained to the greatest extent possible.

- c. Street trees, measuring a minimum of 24-inch box having a minimum height of ten feet and crown diameter of four feet at the time of planting, shall be planted and maintained along the entire shopping center frontage.
- d. A canopy tree shall be planted in the parking lot planter islands to produce shade.
- e. Parking islands shall also include a variety of low ornamental grasses and flowering shrubs.
- f. Existing perimeter landscape setbacks shall not be decreased in size.
- g. Building perimeters shall be landscaped (including trees and planters) adjacent to and around each building, with emphasis placed along the primary building frontage.
- h. Street trees (minimum 24-inch box) shall be provided every 25 ft. on center, within the curb side planter around the entire shopping center.
- i. Landscaping at the entrance of a building shall include box size and/or accent trees to create a focal point to help direct people to the building entrance.
- j. All shrub planting shall be a minimum of 5 gallon size and all tree plantings shall be a minimum of 15 gallon.
- k. Native oaks and field stones shall be incorporated into the landscape plan.
- l. All trees planted within the landscape setback along all street frontages shall be a minimum of 24 inch box shall have a minimum height of ten feet and crown diameter of four feet at the time of planting.
- m. The entrances to the shopping center shall be well landscaped and serve as a focal point.
- n. A large significantly sized specimen tree shall be located and maintained in the landscape area at the corner of Tennant Avenue and Monterey Road.
- o. Landscaping shall be compatible with, and complement the site planning, as well as the architecture of the building. Plantings in parking lots shall help soften and visually tie the buildings to landscaping.
- p. Shrubs and vine planting shall be provided to screen utilities and trash enclosures.
- q. Landscaping shall be added to the existing buildings located along the east side of the Vineyard Boulevard entrance. The landscaping shall be in the form of shrubs and/or container flowers.
- r. All backflow devices, fire risers and check valves shall be screened with landscaping.

2. Lighting

- a. The design of the exterior building lighting and parking lot lighting fixtures shall be compatible with the architecture and the existing fixtures within the shopping center.
- b. The maximum height of all new lighting installed within the shopping center shall be 20 ft. The site lighting shall be high pressure sodium.
- c. All lighting shall be shielded and directed in such a manner so as not to produce harmful effects upon neighboring property.
- d. The lighting for all of the uses within the PUD shall be to the review and approval of the Community Development Director and Police Chief.

- e. Adjustment to the lighting intensity may be requested after the commencement of the use.
- f. Roof top lighting is prohibited.
- g. Landscape up-lighting is acceptable.
- h. Lighting for pedestrian pathways shall be reduced in height and scale, to create a more human-scale feeling and atmosphere.
- i. The lighting throughout the shopping center shall be supplemented with additional fixtures and maintained to meet the Police Department specifications.
- j. Additional lighting shall be added to the existing building on the east side of the Vineyard Boulevard entrance.

E. MISCELLANEOUS

1. **Signs-General Requirements**

- a. All building attached and freestanding signs shall be consistent with the uniform sign program adopted for the shopping center and shall not exceed the sign height and area limited as set forth in Section 18.76.250 of the Morgan Hill Municipal Code.
- b. Each tenant shall submit 1 set of drawings to the representative of the shopping center for approval of proposed sign before applying for a sign permit with the Community Development Department. Said plans shall accompany a formal sign permit application.
- c. A sign permit must be approved by the City of Morgan Hill's Community Development Department before installation of proposed signs.
- d. Address numbers shall contrast with their background and shall be a minimum of six inches in height. Address numbers shall also occur on the monument sign.
- e. The monument sign located at the corner of Tennant Avenue and Monterey Road shall have a curvilinear design.
- f. The Architectural and Site Review Board shall study the possibility of reducing the number and size of the signs.

2. **Appurtenant Uses/Devices**

b. *Shopping Carts*

- 1. Commercial uses providing shopping carts shall provide indoor storage of the carts and shall provide for collection areas consistent with detail "A" attached, throughout the parking lot.
- 2. If shopping carts are provided the shopping center shall post, in a prominent and conspicuous location near major entrances to the retail establishment, a sign with the following information: "REMOVAL OF SHOPPING CARTS (OR LAUNDRY CARTS) FROM THESE

PREMISES IS PROHIBITED BY LAW (CMC SECTION 8.46.0400) AND WILL SUBJECT THE VIOLATOR TO A MINIMUM FINE OF \$100.00.”

3. Shopping carts shall be identified with a sign stating the following information in a typeface which is easily readable and in at least fourteen point type: identification of the owner of the cart or the retailer, or both; notification of the procedure to be utilized for authorized removal of the cart from the premises; notification that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law and the Municipal Code of the City of Morgan Hill; and listing of a valid telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.
- c. Vending machines, rides, newspaper racks or any coin operated devices shall not be placed on the exterior of any building.
- d. No exterior retail displays shall be allowed.

3. Utilities

- a. All backflow devices, fire risers and check valves shall be screened with landscaping.
- b. All future development shall be subject to review by the appropriate utility and public service providers for the City of Morgan Hill.
- c. No utility equipment shall be located within the front setback area unless placed within an underground vault.
- d. All transformers shall be located interior to the site, outside of the front setback area, and shall be screened with landscape material.



REDEVELOPMENT AGENCY STAFF REPORT

MEETING DATE: July 6, 2005

AGREEMENT FOR OUTSIDE LEGAL COUNSEL (RICHARDS, WATSON & GERSHON)

RECOMMENDED ACTIONS: Authorize Executive Director to execute Consultant Agreement for legal services in FY2005-2006 with Richards, Watson & Gershon in the amount of \$75,000.

EXECUTIVE SUMMARY: Due to the specialized nature of Redevelopment Law and the volume and magnitude of the transactions, the Redevelopment Agency traditionally uses outside counsel for assistance with its legal needs, including negotiation and drafting redevelopment documents.

Redevelopment Agency staff has used the services of Richards, Watson & Gershon since August 1996. The attached Consultant Agreement is in the amount of \$75,000. This represents a \$21,000 increase from the last fiscal year, which is due to the anticipated level of work needed for projects in the upcoming fiscal year. Primarily, this consists of the Downtown Request for Proposals projects such as Gunther Brothers Granary, EAH Mixed-use Project, and the Granada Theater.

FISCAL IMPACT: The contract amount of \$75,000 has been budgeted for FY2005/06; \$45,000 from account 317 (non-housing), and \$30,000 from account 327 (housing).

Agenda Item #11

Prepared By:

BAHS Manager

Approved By:

BAHS Director

Submitted By:

Executive Director

Attachment



REDEVELOPMENT AGENCY

MEETING DATE: JULY 6, 2005

TITLE: CONSULTANT AGREEMENT WITH BENCHMARK

RECOMMENDED ACTION(S):

Authorize the Executive Director to negotiate and execute a Consultant Services Agreement with Benchmark, for FY 05-06 in an amount not to exceed \$402,500, to provide project management services and lead testing for housing improvement programs.

EXECUTIVE SUMMARY: For the past four years, the Agency has approved a Consultant Services Agreement Contract with Benchmark to provide project management services and lead testing for housing improvement programs: Senior Housing Repair Program (SHRP), Mobile Home Repair Program (MHRP) and Paint/Clean-up Program.

Benchmark has performed to our expectations with overwhelmingly positive comments from grant participants. During FY 04-05 Benchmark managed 60 grants worth \$216,273 with an administration fee of \$33,252. Staff recommends continued use of Benchmarks consultant services for FY 05-06 to provide project management services and lead testing for housing improvement programs. The FY 05-06 contract would be for \$402,500 which should avoid any cost overruns. This will allow \$350,000 for direct program repair costs and \$52,500 in administration fees (15% fee for management of the programs). Last year's contract was for the same amount and we expect the same costs this year.

FISCAL IMPACT: The BAHS FY 05-06 Housing Division has sufficient funds allocated for these housing improvement programs.

Agenda Item # 12

Prepared By:

**Housing Rehab
Coordinator**

Approved By:

BAHS Director

Submitted By:

Executive Director

Memorandum

Date: June 30, 2005
To: Ed Tewes
From: Steve Pendleton
Subject: Benchmark Contract

SUMMARY

Benchmark Inspection Services have provided project oversight and hazardous inspection services for the past four years. Their current contract expires July 1, 2005. Over these years I have received overwhelming positive feedback from several hundred grantees about Benchmark services. Benchmark has provided a very unique service with their combined mobile home repair inspection knowledge along with their hazardous materials monitoring expertise. They have a proactive attitude towards customer service and have adapted their services to our program needs. I find the fee of a 15% commission on work managed to be very reasonable considering the amount of work needed to manage these programs. I often work closely with Benchmark staff members and conclude they operate in an ethical manner with the methods they use to choose what work is to be done. I find their choice of contractors and prices paid to be within program guidelines and industry standards.

EXAMPLE OF SERVICES

A basic grant may look as follows: Benchmark is sent out to inspect a 1973 mobile home owned by a senior who is unable to manage or afford repairs to the home. They evaluate the repairs and work with the homeowner to find contractors for the project. Common repairs are water heaters, furnaces, roofs, dry rot, steps, grab bars, skirting, earthquake bracing and painting. Generally between three to five different contractors are hired on each project to complete the tasks. Benchmark also provides asbestos and lead paint screenings when required and provides monitoring services if needed.

CONCLUSION

I recommend a new contract with Benchmark be authorized so that they can continue to provide these services. This will also allow more staff time in BAHS and Finance to be directed towards other projects.

**CITY OF MORGAN HILL
JOINT REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JUNE 15, 2005**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 7:03 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Grzan, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Daryl Manning, President of Independence Day Inc., led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Sellers reported that the City Council and Planning Commission held a joint workshop last week. He felt that this was a long overdue workshop and that it was a productive workshop. With Monday's announcement by the Governor that he is calling for a special election, he felt that it was an opportunity for the City to give serious consideration to placing a measure on the November 2005 ballot that may allow the Council to take some of the actions considered. He stated that there were a variety of proposals developed and discussed at the workshop held last week that the Community & Economic Development Committee will be taking a closer look at; quickly returning to the Council with any thoughts and recommendations so that the Council can give it full consideration. He said that these are exciting times for the downtown, but that the downtown is in a precarious situation. He felt the City has an opportunity to move forward quickly, and that there are concerns amongst several individuals in the downtown that without significant actions, the downtown would back slide in ways that would be difficult to recover from in future years. He indicated that the Community & Economic Development Committee has been actively involved and that these activities will be reported later this evening.

CITY MANAGER REPORT

City Manager Tewes indicated that it is mid June and that this will begin his annual weekly discussions with the Council on how the State has failed to adopt a budget. Today is the constitutional deadline for the adoption of the State budget. He indicated that the State budget was presented to the Assembly and

Senate floors and that the budget was approved on a straight party line. This means that it did not meet the second constitutional requirement of a 2/3 vote in each house to approve the budget. He stated that he will report at each Council meeting how well the State is doing. From the City's perspective, there are some matters, great and small, on the State budget. He said that there are disputes on whether or not to continue funding of booking fee reimbursements from the State. There was a proposal from the Governor to advance the repayment of some of the monies shifted in the past. He indicated that this reimbursement was not included in the budget that was presented to the floor. This was the major difference between the Governor's proposal and the proposal voted upon, but has not yet been adopted. He noted that the Council will begin its deliberation on the City's budget this evening with a public hearing, and that the budget is scheduled for Council adoption next week.

CITY ATTORNEY REPORT

City Attorney McClure stated that he did not have a City Attorney's report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comment for items not appearing on this evening's agenda. Allan Abrams addressed the Walnut Grove Planned Unit Development (PUD). He stated that he represents Citizens for Responsible Development, the neighborhood most affected by possible development in the Walnut Grove PUD area. He indicated that this group is approximately 1,000 individuals strong and growing. This group is aware, vigilant, and watching the Council very carefully on its plans for auto dealerships and development of the Walnut Grove area. He referred to the May 4 Council meeting minutes. The minutes raised several concerns that some Council members may not have heard what the group had to say in last fall's election concerning the proposed development of auto dealerships in the Walnut Grove PUD. He stated that the group is against auto dealerships to be developed in this area and that they are not ready to discuss a compromise. However, the group is willing to sit down with the City Council and the Redevelopment Agency and talk about development of the area. He stated that the group is not so naïve to believe that the open spaces/vacant land would remain as such forever. The group realizes that there are property owners who have expectations of developing their land and maximizing their investments. He referred to articles in the Newspaper over the past 6-7 months, in particular, the news article immediately following the last Council's retreat where Council Member Sellers promised no more auto dealerships near Fords. In a similar newspaper article a few weeks later, Mayor Kennedy was a guest columnist who stated that it was important to involve the community in the decision making process and to work toward a solution that works for the greater Morgan Hill community and the nearby neighbors, such as the case with proposed auto dealerships in Morgan Hill. He requested the City come to the residents with proposals and solutions; but not with a proposal for an auto dealership. No further comments were offered.

City Council Action

CONSENT CALENDAR:

Mayor Kennedy indicated that he has a speaker card from Daryl Manning regarding Consent Calendar Item 3. He stated that he would give Ms. Manning an opportunity to address the Council before it takes action on the Consent Calendar.

Daryl Manning thanked the City for its ongoing support of Independence Day Inc. (IDI) that enables the organization to continue the proud tradition of the Fourth of July celebration. She indicated that the Chamber of Commerce's networking mixer to be held tomorrow is being co sponsored by IDI. It is also being co sponsored by Le Bistro and Guglielmo Winery. She indicated that the event will take place at Guglielmo Winery from 5:30-7:00 p.m. She stated that the 2005 IDI T-shirts will be on sale. The original art work will also be on display. She stated that the artist that won the design competition is Jay Jennings, an 11th grade student from Live Oak High School. She said that the Chamber raffle will benefit IDI. To be sold are raffle tickets for a motorcycle that will be awarded on the Fourth of July, prior to the fireworks display. She identified the schedule of Fourth of July activities as follows: July 1 at noon - golf tournament @ Coyote Creek Golf Club; July 3 – Patriotic Sing 6-7 p.m. at Britton Middle School Gym; July 3 – Street Dance 7-11 p.m. in the downtown; July 4 – 5K race and children 1 mile fun walk @ 8:00 a.m. at P.A. Walsh; July 4 – Downtown Parade @ 10 a.m. – 12:00 p.m., Family Festival and Entertainment @ 11 a.m. until the fireworks at Community Park, and fireworks at dusk.

Mayor Pro Tempore Tate requested that item 3 be removed from the Consent Calendar as he would be abstaining from voting on that item.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-15 as follows:*

1. **FIRE SERVICES CONTRACT**

Action: 1) **Approved** the Contract; and 2) **Authorized** the City Manager to Execute the Contract on Behalf of the City.

2. **AGREEMENT WITH “CIRCA: HISTORIC PROPERTY DEVELOPMENT” TO PREPARE HISTORIC CONTEXT STATEMENT FOR THE CITY OF MORGAN HILL**

Action: **Approved** and **Authorized** Execution of the Agreement, Subject to Review and Approval by the City Attorney.

4. **AQUATICS CENTER OPERATING POLICIES**

Action: **Approved** Current Policies Regarding the Required Wearing of Swim Diapers for those under Three Years of Age and All Bags are Subject to Search Upon Entering the Facility.

5. **JOINT POWERS AGREEMENT (JPA) BETWEEN COUNTY OF SANTA CLARA AND THE CITY OF MORGAN HILL FOR CONTINUANCE OF THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

Action: **Adopted** Resolution No. 5910, Authorizing the City Manager to do Everything Necessary to Execute and Implement the Joint Powers Agreement (JPA) with the County of Santa Clara for the City's Continuing Participation in the County's CDBG Program.

6. **INDOOR RECREATION CENTER PROJECT – MAY CONSTRUCTION PROGRESS REPORT**
***Action:** Information Only.*
7. **ACCEPTANCE OF SIGNING AND STRIPING FOR CLASS II BIKEWAYS PROJECT**
***Action:** 1) Approved Change Order in the Amount of \$4,160 for Additional Pavement Widening at Dunne Avenue and Gallop Drive to Allow for Bike Lanes; 2) Appropriated \$5,300 from the Current Year Un-Appropriated Street Fund Balance to Cover Non-Grant Related Costs; 3) Accepted as Complete the Signing and Striping for Class II Bikeways Project in the Final Amount of \$76,053; and 4) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.*
8. **AWARD OF CONTRACT TO PROVIDE PLAN CHECKING SERVICES ON AN AS-NEEDED BASIS**
***Action:** 1) Approved Fiscal Year 2005-2006 Professional Services Contract with Harris & Associates to Provide Contract Plan Checking Services on an As-Needed Basis at a Not-to-Exceed Fee of \$126,000; Subject to Adoption of the Fiscal Year 2005-2006 Budget; and 2) Authorized the City Manager to Execute the Contract; Subject to Review and Approval by the City Attorney.*
9. **APPROVE DISADVANTAGED BUSINESS ENTERPRISE (DBE) ANNUAL GOAL**
***Action:** Approved the City's Disadvantaged Business Enterprise Annual Overall DBE Goal of 3.2% for the Federal Fiscal Year 2004-2005, Beginning on October 1, 2004 and Ending on September 30, 2005.*
10. **AMENDMENT TO CONTRACT PROVIDING PUBLIC WORKS INSPECTIONS ON AN AS-NEEDED BASIS**
***Action:** 1) Approved Amendment to the Contract with Testing Engineers, Inc. (TEI) to Increase the Contract Amount by \$15,000; and 2) Authorized the City Manager to Execute the Contract Amendment, Subject to Review and Approval by the City Attorney.*
11. **APPROVE PURCHASE FOR GENERATOR ENCLOSURE AND TRAILER FOR LLAGAS BOOSTERS**
***Action:** 1) Approved Purchase of a Generator Enclosure and Trailer for Llagas Boosters from Quinn Power Systems; and 2) Approved Purchase Order of \$30,485.81 to Quinn Power Systems for the Enclosure and Trailer.*
12. **PUBLIC WORKS MAINTENANCE AGREEMENTS FOR FISCAL YEAR 2005-2007**
***Action:** 1) Approved New Maintenance Agreements for Sewer Repair for Sewer Lift Station Pumps and Storm Station Pumps; 2) Approved New Maintenance Agreements for Generator Maintenance Services; and 3) Authorized the City Manager to Execute the Agreements on Behalf of the City, Subject to Review and Approval by the City Attorney.*

13. **FOURTH AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**
Action: Authorized the City Manager to execute a Fourth Amendment to Agreement with the Strombotne Law Firm.
14. **RESOLUTION AUTHORIZING THE CITY OF MORGAN HILL TO ENTER INTO AN AGREEMENT WITH PUBLIC AGENCY RETIREMENT SERVICES TO PROVIDE AN ALTERNATE RETIREMENT SYSTEM FOR TEMPORARY AND SEASONAL EMPLOYEES AND ELECTED OFFICIALS**
Action: Adopted Resolution No. 5911.
15. **ADOPT ORDINANCE NO. 1726, NEW SERIES**
*Action: Waived the Reading, and Adopted Ordinance No. 1726, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA-05-01 FOR APPLICATION MP-04-26: COCHRANE-MISSION RANCH (APN 728-32-010).***
- Action: On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council, on a 4-0-1 vote with Mayor Pro Tempore Tate abstaining, Approved Consent Calendar Item 3 as follows:*
3. **AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. TO CO-SPONSOR THE JULY FOURTH CELEBRATION**
Action: Authorized the City Manager to Sign the Co-Sponsorship with Independence Day, Inc., Subject to Review and Approval by the City Attorney.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (5-0) Approved Consent Calendar Item 16, as follows:

16. **FACADE IMPROVEMENT PROGRAM**
Action: Authorized the Executive Director to Make the Recommended Changes to the Facade Improvement Program.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Item 17 as follows:*

17. MINUTES OF JOINT REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING OF JUNE 1, 2005

Action: ***Approved** the Minutes as written.*

Council/Agency Member Sellers requested that Consent Calendar item 17 be reconsidered as he was not in attendance at the June 1, 2005 meeting and that he would be abstaining from the approval of the minutes.

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-Chair Tate, the City Council/Agency Board unanimously **Agreed** to reconsider item 17.*

Action: *On a motion by Mayor Pro Tempore/Vice-chair Tate and seconded by Council/Agency Member Grzan, the City Council/Agency Board, on a 4-0-1 vote with Council/Agency Sellers abstaining, **Approved** the June 1, 2005 Minutes as written.*

City Council Action

PUBLIC HEARINGS:

18. DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-15: EAST CENTRAL-WARMINGTON HOMES

Director of Community Development Molloy Previsich presented the staff report, informing the Council that this item was advertised for a public hearing. However, it was later determined that a development agreement amendment was not necessary. She requested that the Council table the item following receipt of public testimony, taking no action.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** this item.*

19. DEVELOPMENT AGREEMENT AMENDMENT, DAA-98-11: SPRING-MALONE/SPEER – Ordinance No. 1727, New Series

Director of Community Development Molloy Previsich presented the staff report, indicating that this is a development agreement to provide for a one year extension for the construction of one of the homes in the Spring-Malone/Speer project.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1727, New Series.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1727, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1685, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING – MALONE/SPEER TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION (APN 767-53-012)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

20. DEVELOPMENT AGREEMENT, DA-05-02: COCHRANE-LUPINE – Ordinance No. 1728, New Series

Director of Community Development Molloy Previsich presented the staff report of a development agreement for 36-single family homes, the final phases of the Alicante Estates Project.

Mayor Kennedy opened the public hearing. Dick Oliver, representing the applicant, informed the Council that he was in attendance to respond to questions it may have. No further comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1728, New Series.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1728, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-25: COCHRANE – LUPINE (APN 728-34-022)**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

21. DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-04: HILL GERA – Ordinance No. 1729, New Series

Director of Community Development Molloy Previsich presented the staff report; a request for development agreement approval for a 9-lot single family project on 9 acres. She stated that this project received an allocation in April 2005. The expiration date for the building allotment is June 30, 2005.

She informed the Council that the applicant is requesting an 18-month extension of time to commence construction of the 6-building allotments. She indicated that it is an unusually short time between the tentative map approval and the development schedule. In addition, there was a death in the family that creates a need for additional time to manage the project's transition.

Mayor Kennedy opened the public hearing. Nick Gera indicated that he was in attendance to answer any questions the Council may have. No further comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1729, New Series.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1729, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1718, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-02-17: HILL - GERA (APN 728-07-47, 728-07-48, 728-07-49, 728-07-50, 728-07-51, 728-08-014, 728-08-015) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

22. ZONING AMENDMENT APPLICATION, ZAA-01-20: TENNANT-SAFEWAY – Ordinance No. 1730, New Series

Director of Community Development Molloy Previsich presented the staff; a request to amend the precise development plan for the Tennant Station Shopping Center to allow an increase to the size of the Cinelux Movie Theater by 8,586 square feet. The expansion would accommodate three additional movie screens. Staff has found that even with the remodeling, the theater would have an overall reduction in seating capacity from the original condition. She indicated that prior to 2004, the theater had 1,382 seats and with the proposed project, this will be reduced by 93 seats. On this basis, the proposed reduction of 25 parking spaces was found by staff and the Planning Commission not to worsen an existing non confirming situation from the original condition. She informed the Council that the Planning Commission voted 6-1 to approve the request.

Mayor Kennedy opened the public hearing. Ron Sotelo, Manager of the Cinelux Theater and on behalf of Paul Gunsky, stated that they are happy to be in the Tennant Station Shopping Center and that it was their hope the Council would approve the amendment. No further comments being offered, the public hearing was closed.

Action: *Mayor Pro Tempore Tate made a motion, seconded by Council Member Sellers, to **Waive** the reading in full of Ordinance No. 1730, New Series.*

Council Member Grzan expressed concern that the area is being heavily impacted by the addition of the Safeway Store and additional retail stores that were opened across from 24-Hour Nautilus. Even if the

applicant has an overall reduction in the number of seats, he felt the area has increased impacts from other retail stores. He said that it was his understanding that the bowling alley may return and may further impact the area. He stated that he will vote to approve the request because the amendment is a good request. However, he felt that the City needs to look at solving some of the parking issues. It is his hope that City staff and/or the Planning Commission will take a look at the parking issue.

Ms. Molloy Previsich indicated that on a 6-1 vote, the Planning Commission felt that the parking situation, upon completion of the expansion, would continue to be sufficient for the shopping center. The Planning Commission understood that there was a location issue. She noted that most of the vacant unused parking spaces are located in front of the furniture store. She stated that this is an inherit situation that the City lives with as the entire shopping center cannot be reconfigured. She said that this is an existing non conforming use and an existing less than perfect shopping center site plan. Ultimately, the Planning Commission felt that the mixed uses and parking spaces would be adequate for the site. She informed the Council that the area meets fire access requirements.

Council Member Sellers noted that the discussion among the Planning Commission, including correspondence received from Cinelux representatives, focused on peak hours for the theater. He said that the key to the issue is the overlapping hours not only for Cinelux, but for the other businesses. He did not believe that the parking issue is one that Cinelux has to address, but that it needs to be addressed. He recommended the City continue to work with the shopping center's developer in figuring out complimentary uses for the shopping center. He felt that it would be disastrous to have a series of restaurants with similar hours as the theater. He noted that there is a fair amount of turnovers at the shopping center with several of the major businesses leaving. He recommended that the developers of the shopping center look at businesses that would be complimentary to the flow so that the parking spaces are not impacting critical hours, particularly in the weekend or evenings. He stated that he too would be supportive of the request, but wanted to make sure that the City relays this concern to the shopping center developers.

Mayor Kennedy said that he and the Council are in receipt of a letter from Paul Gunsky from Cinelux as well as Shelly LaFore. He stated that he has been pleased with the performance of Cinelux. He noted that new Safeway Store and new activity taking place in the center is bringing the shopping center back to life. He felt that the additional traffic is a good thing. However, the City needs to be somewhat cautious about not going too far where it jeopardizes the safe performance of the shopping center. At this point, he does not see a risk in the expansion and that the actions taken thus far are welcomed and appropriate. The community now has a wonderful theater for families and members of the community. He stated his support of the work that has taken place and the continued development of the Cinelux Theater. He thanked the developers and Paul Gunsky for making this happen.

Council Member Carr stated that he could only hope that a parking problem needed to be solved at the shopping center as it is a better alternative to a vacant shopping center. He expressed best wishes to Cinelux and thanked them for their continued support of the community.

Vote: *The motion carried unanimously (5-0).*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1730, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PLANNED UNIT DEVELOPMENT (PUD) DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE (APN's 817-06-039, 040 & 41), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

23. FOX HOLLOW-MURPHY SPRINGS LANDSCAPE AND LIGHTING ASSESSMENT DISTRICT – CONDUCT FIRST PUBLIC HEARING FOR PROPOSITION 218 BALLOTING PROCESS

Mayor Kennedy stepped down as he resides within 300 feet of this item. He excused himself from the Dias.

Deputy Director of Public Works Struve presented the staff report, indicating that tonight is the second meeting of a series of three that is required by the Proposition 218 balloting process initiated by the Council on May 4, 2005. At the May 4 meeting, the Council declared its intent to levy assessments in 8 of 20 sub areas where the assessment rate is proposed to be increased and 17 out of the 20 areas where a 3% per annum inflator is proposed. He indicated that the third meeting will be held on July 6 where all ballots mailed to property owners affected will be tabulated. He stated that tonight's meeting is for the specific purpose of allowing property owners to express comments relative to any issues about the landscape and lighting district and the proposed rate increase. He stated that since the May 4 meeting, City staff has sent a packet of information to each property owner explaining what is taking place; receiving the legal notice required relative to either the proposed rate increase, the inflator and/or both; receiving a ballot. He informed the Council that public meetings were held on June 2, June 7 and June 13 at public works and the community center. Also, in attendance at the public meetings was the contractor that performs City maintenance in order to increase the accountability to the residents and receive comments. He said that the contractor has already responded to several items raised at the meetings. He informed the Council that two items emerged from the meetings: 1) there were some individuals opposed to the increase. In general, they were in favor of the increase, but wanted accountability for the services to be received in the coming years. 2) There were inquiries about the possibility of establishing a city-wide landscape assessment district where there may be more than one purpose for this assessment district (e.g., maintenance of roadway medians, public facility grounds; incorporating the existing landscaping and lighting area). He indicated that staff mailed 706 notices. At the 3 meetings held, approximately 15 individuals attended each meeting. He stated that overall, between phone calls, e-mails and meetings; he received between 30-40 responses.

Mayor Pro Tempore Tate opened the public hearing. No comments being offered, the public hearing was closed.

Action: **No Action Taken.**

City Council and Redevelopment Agency Action

PUBLIC HEARINGS:

24. PUBLIC HEARING OF PROPOSED FISCAL YEAR 2005-2006 OPERATING AND CAPITAL IMPROVEMENT PROGRAM (CIP) BUDGET

Finance Director Dilles presented the staff report on the proposed Fiscal Year 2005-06 budget. He presented a power point presentation that covered the following: total general fund revenues; sales tax receipts by quarters; general fund fee revenue assumptions; a \$106 million expenditure budget proposed for the FY 2005-06 budget and a CIP budget of \$37 million. He stated that the general fund cost is proposed at \$19.9 million and revenue is at \$18.7 million with a net deficit of \$1.2 million. He said that the projections, over the next five years, depict a structural deficit of over \$1 million per year for FY 2005-06 through FY 2009-10. He addressed various budget scenario projections and staff assumptions. He addressed a possible increase in the Redevelopment Agency tax increment and its use. He stated that should the Redevelopment Agency tax increment not be increased; funds would go toward property taxes.

City Manager/Executive Director Tewes indicated that based on the direction given by the Council/Redevelopment Agency; staff will be looking at a series of options for Redevelopment Agency tax increment. He stated that staff did include in the forecast any variability in the reimbursement that the Redevelopment Agency makes to the General Fund based on whether it was large or small. Staff assumed that the existing Redevelopment Agency project area would remain and that the tax increment would continue to flow during the five year forecast period. He clarified that options will be evaluated for the City Council/Agency Board's decision later this year.

Finance Director Dilles indicated that there is an assumption that the indoor recreation center would break even in the year beginning September 1, 2008. Another assumption is that the City will receive \$630,000 from the State to restore the vehicle license fees and other assumptions such as State borrowing, no city hall expansion, and no expansion in fire services over this period of time. He informed the Council that staff is requesting that the Council/Redevelopment Agency reconfirm the adoption of the budget scheduled for June 22, 2005, following receipt of public testimony.

Council/Agency Member Grzan noted that the aquatics daily admission, seasonal passes and swim lessons are proposed to increase. He inquired whether other recreational fees are proposed to increase. He inquired whether there have been structural changes to class registration/participation fees. Is there a mechanism for the City to identify how the fee increases are affecting the public? He expressed concern that should the City start raising fees for recreation services, the City may preclude a portion of its population from participating in public recreational services. He recommended the City closely monitor recreational fees and how it affects the population. He expressed concern that residents may not be able to afford to participate in programs they paid for.

Finance Director Dilles informed the Council that some of the aquatics rental structure has been changed with the tenants who rent the facility. He indicated that there have been no structural changes to class registration/participation fees.

Council/Agency Member Sellers stated that the Council may be interested in considering piggy backing on the Governor's November 2005 ballot. He requested that the City Clerk provide costs for a special election.

City Clerk Torrez informed the Council that no funds have been included in the proposed Fiscal Year 2005-06 budget for a November 2005 election. She indicated that the Santa Clara County Registrar of Voters will be hosting a meeting next week and that they would advise cities as to costs associated with elections this upcoming year.

Mayor/Chairman Kennedy opened the public hearing

Gina Varela Faust, 2005 Chair of the Morgan Hill Chamber of Commerce, informed the Council that on behalf of the Chamber of Commerce and its 650+ members and business partners, as it relates to the economic development partnership budgeting, she stated their support and requested a continuation of such efforts. She said that the Chamber of Commerce looks forward toward working with the City of Morgan Hill again this year. The Chamber of Commerce appreciates the time and efforts the City Council invests in the future of the community and with the continued Chamber of Commerce private enterprise partnerships. She stated that the Chamber of Commerce believes that Morgan Hill will continue to realize exceptional benefits from collaborative efforts.

No further comments being offered, the public hearing was closed.

Council/Agency Member Sellers noted that the Finance Director indicated that should the City continue with its current course, the City would end up in a deficit. He said that the Council is the policy maker and stated that the Council wants to maintain a 25% reserve. He felt that it was important for the public to understand that the City will have dipped into the reserve to a level that exceeds the Council's Goal. He noted that the City has been very prudent and that the City will continue to have a reserve past this time period if it continues on its trajectory. He felt that it was crucial that the City begins its discussion with the community that there will be impacts. He stated that it is sometimes difficult for the public to understand the consequences of a lot of the actions the City undertakes. He said that several of the actions to be taken this evening will have a direct impact to the community in terms of paying higher fees to use the aquatics center or not seeing the same level of services in parks or other facilities. He felt that the Council needs to continue the conversation that explains why the City is still able to maintain services at certain levels as much as possible. However, it will not be at the same level the community has been accustomed to and explaining the reasons why. He felt that sometimes the City does too good of a job trying to minimize impacts to the community, and that it was important for the Council to take a step back and advise the community what is taking place. He noted that the Council has repeatedly stated that it wants to make sure the City minimizes the impacts on those who can least afford to pay for recreational services. Should the Council continue to state that all services need to pay for themselves and the City continues to face take a ways from the State and/or other budget cutbacks, the City will be

in a position where it will force itself into a corner where everyone will need to pay more, including those who can least afford it. He recommended that the Council figure out ways to publicly convey this information to the community so that community members are aware of the situation, and that all impacts are not without costs.

Mayor/Chairman Kennedy indicated that he sent an e-mail message to the City Manager and the City Council prior to the budget workshop held on May 20, 2005. His e-mail talks about the City Manager's budget message, and the fact that it has been the State takeaways, the economic downturn, and the Public Employee Retirement System investment losses that have hurt Morgan Hill and other cities. He stated that the Council had the foresight to set aside reserves during the good times and did not hire a lot of new people, nor commenced a lot of new programs that would create ongoing costs. He stated that the City has been frugal and that the City has the reserves that can be utilized in this economic downturn. He said that the impacts being seen are structural and difficult to deal with. He said that the City Manager and staff have cut the budget significantly over the past several years; including services community members have been used to seeing. He stated that the City continues to have a minimal staffing level in the police department, and felt that everyone would like to see additional police officers on the street, traffic enforcement and more focus on public safety. Even though the City continues to have one of the best smallest police department in the state, it is not an easy task to do. He said that it is difficult for City staff to operate under these very tight resources and that creates a lot of stress. He wanted to make sure City employees know that the Council understands the situation the City is in. He felt that it was important that community members understand the City's situation. He agreed that the Council needs to commence in engaging the public in a conversation on what levels of services they expect. The City needs to know whether the community wants to have bare bone level of services or whether it expects to have a city that provides a full range of services; services everyone is willing to support.

Mayor/Chairman Kennedy presented specific items relating to the budget as follows: 1) After school programs for youth. He stated that he recently returned from a Mayors' conference in Chicago in which the City of Chicago offered after school and summer programs. He indicated that the City of Chicago has partnerships with schools and the library on a tremendous array of programs. He requested that \$200,000 of the reserves be set aside for the purpose of keeping the minimal level of after school programs that currently exist, expanding on these. He recommended the City seek grants to assist in after school programs, especially for youths at risk. It was his belief that the use of reserves for one time expenditures is appropriate and that he views this as being a 1-2 year project in order to keep the programs alive as the City builds its economic and revenue base. 2) He indicated that the City was limited in what it could do to slow down traffic to make the downtown more pedestrian friendly. He stated his support of setting aside an additional \$100,000 in reserves to improve traffic calming in the downtown. 3) \$50/month council member allowance to be used for cell phones, PDAs, or other communicating services/tools, subject to City Attorney legal review. He noted that there are costs that each Council member incurs, and felt that this would be a minimal cost to help support the Council's efforts in its elected duties. 4) He will be requesting that staff agendaize the discussion of increasing Council members' compensation and possibly the Mayor's compensation. He acknowledged that it may take a year or two to increase compensation.

Council/Agency Member Grzan noted that the Mayor indicated that the Council, over the last couple of years, did not add programs that would add ongoing costs. However, he noted that during these difficult times, the City is adding programs that are doing the opposite. He noted that the City built a community center that resulted in losses. An aquatics center was brought on line, resulting in a loss of \$274,000 in this last year alone. The City will be adding an indoor recreation center; noting that the budget made an assumption that it will break even. He stated that he knows of no other local public indoor recreation facility that makes money. The City will also be adding an outdoor recreational facility that will take \$260,000+ annually to maintain. He felt that the City should be conserving its dollars during these lean times and use them to maintain the City's infrastructures in place; including the core services of public safety and public works. It was his belief that the programs the City will develop and build will place the City at significant risk. He felt that the City should be prudent on how it uses its dollars during these difficult times. He inquired how much money has been spent in Redevelopment Agency funds over the last couple of years. If \$100 million in RDA funds have been spent, he inquired as to the return on these funds. It was his understanding that RDA dollars are economic development dollars that should be used to build and secure infrastructures such that the City brings in money that would allow it to support and maintain the facilities built and to offer affordable programs. He felt that this should be the City's investment strategy. However, at the same time, the City is taking on a significant number of projects that will place the City at risk. He felt that some of the projects in the pipeline will cost the City significantly. He expressed concern about the direction the City is taking during these difficult times. He did not believe that the financial impacts have ended for the City as the City does not know what the State will do to cities. It was his belief that "hope" has become the City's strategy and that this puts the City at risk. He stated that he would agree to move forward with the budget, but recommended that the Council/Redevelopment Agency take a closer look at RDA dollars and how they are to be used in the future as it was his belief that they should be used to bring in dollars in order to proceed with City projects and sustain them.

Mayor Pro Tempore/Vice-chair Tate noted that under agenda item 26, the Council will be discussing a critical item; the direction the City is to take to ensure that the reserves are not depleted in the future. He indicated that the Council received Mayor Kennedy's e-mail budget recommendation. He stated that the Council discussed the after school programs at the budget workshop. The Council noted that the Village Avente after school program had been cut. He said that it was his belief that the entire Council would like to see the Village Avente after school program reinstated as well as other programs for the underserved parts of the community. He stated that he would support the use of reserves to reinstate the Village Avente after school program. He indicated that he would like to see the results from the downtown traffic calming measures implemented before making decisions to go further. He understood the Mayor's concern about having some of the Council members' expenses reimbursed. However, it was his belief that Council members knew what they were getting into when elected into office. Therefore, he could not support a Council allowance. He felt that the City needs to focus on whether the City is able to convince the public that additional revenue generation is required. Once determined and supported by the community, he felt that the Council could address a lot more of these areas.

Council/Agency Member Sellers acknowledged that the Council reviewed the need for after school programs at the budget workshop. He agreed that after school programs are important. He stated that he was trying to figure out ways to innovatively coordinate the City's volunteers, and non profit resources

to continue after school programs as well as the indoor recreation center programming. He felt that it was important for the youth in the community with less means to have opportunities. He recommended that the community be integrated and provide interaction between young individuals of all ages and all economic levels. He said that it is a budget challenge the City faces. He noted that the Council adopted a policy to limit the reserve funds to one time uses and to limit them to projects that provide an economic development incentive. He stated that it was the expectation of the Council that it would see an income stream as a result of the use of these funds. Should the Council decide to implement a different policy, he felt that it should be stated publicly. The Council needs to identify what it believes the reserves should be used for. If the Council is going to change course and start using reserve funds other than for those items that generate income, it needs to be stated. As important as the items recommended by Mayor Kennedy for funding are, he felt that they were outside the parameters of the policy set by the Council. He said that there were several areas within redevelopment funding that the Agency Board may want to look at as far as the downtown is concerned. He thanked staff for installing the barriers in the downtown as they have had a significant impact on the vehicles traveling in the downtown. He stated that he would like to see how well the traffic calming measures recently installed are working before spending additional funds. If the Council wants to consider increasing salaries in the future, he would like this to be considered after his term in office as he did not want to vote on an item that will impact him as a Council member. The Council needs to make sure that it is not sending a mixed message to employees that they need to do more with less. He said that funding for after school programs is worth considering. However, he felt that the Council needs to have a discussion on its policy on the use of reserves before deciding on reinstating an item that goes against the policy in place.

Council/Agency Member Carr indicated that he and Mayor Pro Tempore Tate have discussed trying to find alternative funding sources for after school programs at the City-School Liaison Committee meetings. He said that it was his belief that the subcommittee of the Planning Commission is looking at Measure C and ways of generating revenue sources for these kinds of programs. However, if all Council members agree that after school programs are a good use of reserve funds, it may spur the discussion about the reserves and whether a 25% reserve is an acceptable level, or whether the level should be lowered. He noted that the Council continues to dip into and use the reserves almost as a slush fund for community promotions, etc. He stated that he was supportive of using the reserve funds for one time uses. However, he felt that the Council needs to be realistic about the reserve funds; taking a look at the reserve policy to see if it needs to be changed. He supported awaiting the results of the recently installed traffic calming measures before proceeding with the expenditure of additional dollars.

Mayor/Chairman Kennedy inquired whether the Community Services & Economic Development Committee or staff reviewed the cost of the Village Avente after school program or other programs.

City Manager/Executive Director Tewes indicated that at the Council's budget workshop, staff indicated that 3-4 years ago, the City began experimenting with after school programs. He stated that some programs were more successful than others, while others had very little participation. He indicated that programs with few attendees were eliminated. When the budget issues arose, the City eliminated after school programs. He stated that the Village Avente after school program was one of the more popular and successful after school programs. It was his recollection that Recreation and Community Services

Manger Speer indicated to the Council that the cost for the Village Avante's after school program was approximately \$37,000.

Council/Agency Member Carr agreed that after school programs are of great benefit. However, the City needs to be vigilante with the use of every dollar and make sure that the City is receiving benefits.

Mayor/Chairman Kennedy said that he brings the need for after school programs because the community survey indicates that the community ranked after school programs for at risk youths high.

City Manager/Executive Director Tewes said that should the Council wish to include funding for after school programs, it would be appropriate to ask staff to provide the Council with thoughts on program options and costs. The Council could direct staff to return with a report and recommendation on options and specific approaches for after school programs.

Mayor/Chairman Kennedy said that it was his hope that the City-School Liaison Committee would get involved with the School District and have a discussion with the new superintendent on this issue.

Mayor Pro Tempore/Vice-chairman Tate said that there were discussions about after school programs, but that he could not recollect whether it was a discussion at the Committee level or separate from the Committee with school board members on what factors made the Village Avente program successful.

Mayor/Chairman Kennedy noted that there is a Council consensus that it would like to do something with regard to after school programs. He recommended that the City-School Liaison Committee, working with staff, return to the Council with a recommendation. He agreed that the use of reserve funds for after school programs would be a deviation from the Council adopted policy. The question is whether the Council believes after school programs are important enough that it should change the policy in order to move forward.

Council/Agency Member Sellers stated his support of bringing back a report on after school programs, particularly programs that were successful. He recommended that indoor recreation facility uses be brought back in association with the report in order to integrate after school programs and have a sustainable program. He felt that the City needs to avoid impacting a program put into place only to eliminate it at a later date. He recommended that the City look at maintaining programs long term.

Mayor/Chairman Kennedy recommended that the City Manager be asked to schedule the discussion of sustaining such a program and how the indoor recreation center would fit in this discussion/role at the Council's January 2006 goal setting retreat.

Council/Agency Member Grzan noted that it has been stated that the reserve funds are to be used for activities that generate revenues.

Mayor Pro Tempore/Vice-chairman Tate clarified that reserve funds are to be used for economic development and investments.

Council/Agency Member Carr indicated that there are different levels of reserves to be used for different emergency purposes. The policy being referred to by Council/Agency Member Grzan is that the Council could dip/spend a certain percentage below the 25% reserve if the City could see a certain economic return within a certain number of years.

Mayor/Chairman Kennedy said that it was his recollection that there are three reserves: emergency, economic uncertainty, and general fund reserves.

City Manager/Executive Director Tewes stated that over the course of the past five years, the Council has revised the reserve policy. The current reserve policy has been in place for a year and that it is reflected on page 35 of the budget document. The general fund reserve policy states that reserve levels should not be depleted below 25% of revenues in any year with certain exceptions. He identified the exceptions. He stated that this policy was the basis used by staff to make the budget forecast. He said that the long term budget strategy states that the City will use the reserves above the 25% to sustain services until the budget comes into balance.

Council/Agency Member Carr referred to the community promotions budget and noted that the budget reduction strategy does not provide funding for non profit community events in the next calendar year. He did not believe the Council can continue funding at the level it has in the past. However, he felt the Council would receive requests for funding from non profits only to dip into the reserves. He recommended that the Council provide some funding in the community promotions budget and to ask one of the Council subcommittees to return with guidelines on how the dollars are to be spent.

Mayor/Chairman Kennedy supported adding funding to the community promotions budget as suggested by Council/Agency Member Carr.

Council/Agency Member Sellers stated that he would support adding funding to the community promotions budget at a level that makes sense as long as the funds are earmarked or designated for certain activities/entities.

Mayor Pro Tempore/Vice-chairman Tate stated he would agree to look at a community promotions budget, but that he was ambivalent about funding non profit agencies. He expressed concern with the message being sent that there is still plenty of money to fund items that are extraneous and whether the money was really there.

Council/Agency Member Carr said that the Council subcommittee would indicate what is extraneous and what is not extraneous.

City Manager/Executive Director Tewes informed the Council that the proposed budget includes \$125,000 of RDA funds for a contract with the Chamber of Commerce for economic development activities.

Mayor/Chairman Kennedy clarified that he stated that the City has been very frugal during the good years. He said the City has hired minimal staff and minimized growth in lien years. With respect to the

Redevelopment Agency and the return on investment (ROI), he stated that it was his understanding that not all RDA projects need to have an ROI. He said that there are public service community projects that are of community benefit and will eliminate blight.

City Manager/Executive Director Tewes indicated that RDA law does not specify a particular return on investment. The law states that a redevelopment agency must adopt a redevelopment plan, that the plan must identify the blighting influences on a specific geographic area, and must include a plan for how to spend money to address the blighting influences. He stated that in Morgan Hill, the redevelopment plan discusses the lack of economic development opportunities. Therefore, some of the blight is attributed to economics. The redevelopment plan identifies the lack of infrastructures, especially flood control and streets, and the lack of important community facilities as blighting influences. The redevelopment plan identified a series of facilities that could be invested upon by the Redevelopment Agency.

Council/Agency Member Grzan felt that it would be prudent to have a plan that not only creates enough income and revenue to build the facilities but to sustain them. He noted that the City has built facilities without a mechanism to sustain them. He stated that the City's economic base needs to be strong such that even during difficult times, the plan sustains the infrastructures. He noted the Mayor's recommended budget items would have driven the city's deficit even further. It was his belief that the City needs an increase in its revenue and its economic base to sustain the facilities the City has in place today. He stated that he finds it difficult to move forward with the construction of new facilities without a mechanism in place to sustain the facilities in place. He stated that he is skeptical about the community coming forward in support of additional revenue sources as it has had difficulty doing so, historically. He said that the Council should have adopted a more prudent policy years ago. He stated that he would have postponed the construction of the indoor recreation center until such time the City is able to sustain current facilities.

Mayor/Chairman Kennedy said that based on Council/Agency Member Grzan's comments, the City would have postponed construction of facilities. He stated that he could not support this philosophy. He noted that the Community & Cultural Center has been an overwhelming success. He acknowledged that there are some operating costs that have been incurred, but that they have been minimal. He felt that all of the City's facilities have been operating well in comparison to the cost of other facilities. He stated that there is a legitimate cost for recreation services that he is willing to support, and that it was his belief the community is willing to support these costs as well. He felt that a healthy community reaches out and demands these types of facilities in order to have a healthy/viable community.

Council/Agency Member Grzan agreed that these are wonderful facilities. However, if the City is unable to achieve its economic goals, the City would be cutting core safety services. He said that weighing the loss of core safety services with the benefits of recreational programs the City may not be able to maintain, the City would be placing the community at risk.

Mayor/Chairman Kennedy said that the City needs to involve the community in this conversation. He noted that this will be a topic of discussion with agenda item 26.

Council/Agency Member Carr stated his support for funding in the community promotions budget without suggesting a dollar level. He also supported the Mayor's suggestion of after school programming. He noted that the Mayor suggested \$200,000 in reserves be set aside for after school programs. He and Mayor Pro Tempore/Vice-chairman Tate felt that this amount was a little high.

Mayor/Chairman Kennedy noted that the Council asked staff to return with a budget number for after school programs.

City Manager/Executive Director Tewes stated that it was staff's belief that it was the Council's consensus to ask staff to evaluate after school programs, returning with a series of options and budget amount(s) for Council consideration at a later date. It was his belief that it was Council Member Carr's hope the Council would ask a Council committee to return with guidelines for community promotions expenditures. He did not believe that there was consensus for some of the other recommended items. With respect to traffic calming expenditures, it was the Mayor's belief that the Council is suggesting that the City wait to see the results of the traffic calming measures installed to date. He did not believe that there was action taken with respect to Council allowance for communication devices or PDAs.

Council/Agency Member Grzan stated his support of the \$50/month Council allowance as it would help offset his personal costs for conducting City business.

Mayor/Chairman Kennedy stated that another approach to the Council allowance suggestion would be for each Council member to submit its expenses for reimbursement. It was his belief that there was some budget allocation for Council expenses.

City Manager/Executive Director Tewes acknowledged that there are allocations within the Council's budget to provide for reimbursement of expenses. He stated that there is no way to precisely predict whether Council members would choose to ask for reimbursement or to attend conferences. He indicated that he had a conversation with Acting City Attorney McClure who reminds him that compensation of council members is established by State law, and for the Mayor, by the ordinance adopted by the voters when the City went to a separately elected mayor. He said that it may be possible to have the City purchase certain devices and make them available to Council members during their tenure on the Council, but it is not possible to provide an allowance to Council members for personal equipment as it would be tenable to compensation that is regulated. He said that it is City policy to provide reimbursement for any reasonable and actual expenses.

Council/Agency Member Carr recommended review of the policy on how the City uses reserve dollars outside of the budget process. He recommended that the Finance Committee take a look at the policy.

Action: *By consensus, the City Council/Agency Board **Provided** the above comments and **Agreed** to schedule the Proposed Budget for Adoption on June 22, 2005.*

Redevelopment Agency Action

OTHER BUSINESS:

**25. CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT MARKETING PLAN
FOR FISCAL YEAR 2005-2006**

Director of Business Assistance and Housing Services Toy presented the staff report, indicating that it is being recommended that the Agency Board refer the Chamber of Commerce's Economic Development Marketing Plan to the Council's Community & Economic Development Committee for consideration and recommendation. Should the Agency Board desire, it can establish parameters by which the Committee can evaluate the proposal.

Chairman Kennedy opened the floor to public comment.

Dan Ehrler, representing the Chamber of Commerce, expressed their support of staff's recommendation to meet and address the proposed Marketing Plan details at the earliest date possible. It is felt that the meeting would be productive and they look forward to the meeting. He stated that the Chamber of Commerce believes and views this as a partnership between the City and the Chamber of Commerce, and the efforts put out, as an investment that has/will bring a return on collaborative efforts.

No further comments were offered.

Agency Member Sellers, chair of the Community & Economic Development Committee, stated that in talking briefly with staff and Chamber of Commerce representatives earlier this evening, it was agreed to review the Chamber of Commerce's Marketing Plan at the Committee's July 19 meeting. Therefore, there is time for subsequent discussion or input prior to the Committee's meeting. He stated that he will have questions that he will raise with the Chamber at that time and encouraged Council members to bring forth questions as the Committee will make sure the questions are answered as well.

Agency Member Grzan inquired how the City measures the value of its dollars and what the rate of return will be.

Agency Member Sellers said that this is a continuation of a question raised when Chamber of Commerce representatives first came to the Council. He stated that the Chamber of Commerce has developed ways to quantitatively measure the rate on return. He said that the Committee will be looking at the measures, how they have progressed and what is anticipated for next year.

Chairman Kennedy noted that the impact to the budget remains at \$125,000 whether the Agency Board relies on economic development or not.

Executive Director Tewes said that the \$100+ million budget includes staff's recommendation that the Agency/Council appropriate \$125,000 for services as requested by the Chamber of Commerce. He noted that under this agenda item, the Agency Board is considering a specific proposal from the Chamber of Commerce on how they propose to use the money. He stated that it would be appropriate for the Committee and the Agency Board to evaluate the use of the money.

Agency Member Grzan noted that it was mentioned that some of the dollars would be used to offset overhead costs. It was his understanding that in previous years, the dollars were used exclusively for projects. He felt that this year, it is being proposed to reduce the scope of the project based on coverage for overhead. He requested that the Committee take a look at this as well.

Agency Member Sellers indicated that he was going to ask the same question as this is an important issue; not only in terms on how it impacts the Chamber of Commerce's ability to provide services, but the precedent it will set in the use of RDA funds and the appropriate use of the City's economic development focus.

Action: *On a motion by Vice-Chairman Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Referred** the Morgan Hill Chamber of Commerce's Economic Development Marketing Plan to the Council's Community and Economic Development Committee for Consideration and Recommendation.*

City Council Action

OTHER BUSINESS:

26. YEAR-LONG COMMUNITY CONVERSATION

Mayor Pro Tempore Tate stated that he serves on the Financial Policy Committee (Committee) along with Council Member Grzan and City Treasurer Roorda. He indicated that the staff report was put together in response to a January 2004 adopted Council policy that states that the City is committed to a sustainable budget strategy. At the January 2005 Council retreat, the Council agreed to focus in getting the community involved in the sustainable budget strategy and determine the pulse of the community on the issues involved in revenue generation. He stated that the City conducted a survey and that the City Manager would be addressing the results of the survey; followed by discussions about where the City goes from here. He stated that the Committee has met 3-4 times to try and identify the framework for the community conversation, what it is supposed to do, the timeline involved, and what is to be accomplished. He noted that the staff report is divided into three phases, but that there is no hard and fast way to proceed with the phases as they may overlap. The Committee believes that the City needs to educate the community on how the City got to where it is and where the City is so that the public understands the situation. The Committee is recommending that this be an interactive process; educating the community and listening at the same time. Once the City identifies certain members in the community who understand all of the issues, the City needs to enter into an interactive dialogue that identifies options; narrows down the options, and develop consensus.

Mayor Pro Tempore Tate addressed the recommended conversational guideline being recommended. He said that the Committee came to the realization that even with staff support, the City does not have the expertise, without a lot of investment of staff and Committee time, to develop a program; developing a program in a manner that would be successful and get the job done. He indicated that the Committee is recommending that the Council allocate at least \$50,000. He clarified that the requested funding appropriation is not for the purpose of conducting a further survey, but to hire a consultant to help the

City shape the program in a way that would be successful. He noted that the Council has discussed investment of reserves for economic development activities that could have a return on investment as part of budget discussions. He stated that this community conversation may not have a return on the investment in terms of getting public support, but the Council will understand where the community is and the provisions of services they want provided. Therefore, the Committee believes that there is a notion of justification for the investment of the resources that it will take to do the job right. He stated that the recommended \$50,000 is a minimal amount and that the community conversation will still require a lot of staff and Committee time to augment and work with the consultant brought on board.

Mayor Pro Tempore Tate stated that the Committee agreed that it is essential to establish a true dialogue with the community. The Committee believes that there has to be time lapses between conversations where individuals can review materials and options. The Committee also believes that the City needs to educate the community and that the City needs to listen. It is being suggested that the community tell the Council where they want the City to go, but that this not be done in a dynamic or a forceful first response approach. It is felt that a studious atmosphere needs to be created. He informed the Council that there was a lot of discussion, at the Committee level, on who the audience should be. It is being recommended that the City look for individuals who can assist and have leverage with other members in the community. Community leaders need to be sought; individuals who will seriously come to conclusion about the services needed from the City; at what level they are willing to pay for these services; and the tradeoffs between the level of service and the dollars they are willing to spend. The Committee would like to see community leaders selected who can draw other individuals into the conversation.

Council Member Grzan said that the Committee and staff have done a great job in the process before the Council. He stated that the process is a very active and dynamic process and that each council member will need to engage themselves with the community to help educate, inform and receive feedback. He stated that this would be an extensive process; a process that he does not believe many communities have undertaken. He stated that the City needs to go out to the community and tell them how the City got to the place it is in. Also, to tell the community what the City has done to date to help matters. He noted that the City has cut hundreds of thousands of dollars from the budget, and yet, it is still not enough. It is felt that the community needs to know what the ramifications will be should the City not be able to bring in \$1.2-4 million in new revenue. The community needs to know what services it will lose or what facilities will close. He felt the City needs to meet with community leaders, Parents and Teachers Associations, the Morgan Hill Unified School District Board Members, and engage neighborhoods and individuals. Further, the City needs to put together an informational packet, utilizing the media, newspapers, and/or other means of communication that can reach every neighborhood. The City is to provide the community methods to access the Council; provide forums, workshops, e-mails, surveys, etc., as means of communicating with the public. It was his belief that the public has a poor view of government beurocracy and the City needs to overcome a significant bias that is out there. He felt that most community members do not believe the City does a good job. He recommended that the City share with the community what it has done and advise that the City is at a decision point.

Council Member Grzan stated that in order to plan for the process, the City needs to have a dedicated person on board in conjunction with staff. He stated that Phase I would educate and engage the public;

Phase II would go back to the community, and possibly conduct another survey and identify community responses; and Phase III would result in a consensus building. The Committee believes that this will be an extensive process; one that would result in fruitful gain. It was his belief that this is a start as the plans would develop over the next couple of months.

City Treasurer Roorda felt that this is a great process for the Council to consider. He thanked his fellow committee members, particular the leadership of Mayor Pro Tempore Tate for bringing this recommendation forward to the Council. He said that all Council members, at some point in time, have been engaged in the conversation at the Committee level. He was pleased to see the recommendation at the Council level as it will receive the discussion needed. He was also pleased that the City was able to bring in the press and others to make sure that this information comes out to the community. He noted that it has been five years since the Council adopted the five year budget strategy. He said that it has taken time for the process to come before the Council because it is known that the community will be facing some pain. Citizens may be willing to pay more taxes to fund the level of services in place today that are currently being subsidized, attributed to the efforts of other Council members for not spending up to the level of revenues that came in. If residents are not willing to pay additional taxes, they will face lower service levels. He stated that this community is fortunate that the City has reserves in place and that it has a year to have the community conversation. He recommended that this evening's presentation be made to the community; engaging the community and receiving their feedback in an affective way so that the City can move forward with a decision in a clear and careful way; one that is studied and considered.

Mayor Kennedy said that during the Council's goal setting retreat, the Council discussed several issues: economic uncertainties, the economic difficulties the City is having, and renewing the City's vision. He stated that he was pleased to see the work of the Committee. He said that the last time the City reviewed its vision 10-years ago, the Council discussed specific projects and that the Council did not discuss the issue of services. It was his believe that this was the logical next step, in terms of the broader goal of what the Council is trying to do as a city. He complimented the Committee for what it has put together. He felt that this was an excellent plan to move forward and that he would be supporting it. He stated that he would not be pursuing the vision because it was his belief the Committee was picking up this charge, in a different sense.

Mayor Pro Tempore Tate noted that the Council will be approving \$25,000 to be used for a second survey as part of the adoption of the budget next week. He said that the Committee talked about the possibility of a third survey, if necessary. The Committee is also recommending a \$50,000 appropriation for the retention of a consultant to help guide the City through this process.

Mayor Kennedy encouraged the Committee to look at what other cities have done, particularly through the League of California Cities. It was his belief that there are other projects similar to this one that might assist with ideas and thoughts to help supplement the work of the Committee.

Council Member Sellers stated that he is very familiar with the range of activities the city has undertaken. He is also familiar with the perils of not engaging in a long term education and/or conversation process. He noted that there were approximately 74 measures placed on the ballot

sponsored by various cities over the course of 2004. He indicated that approximately two-thirds of these measures failed. Cities realized they had problems and took steps to place a measure on the ballot in response to the problem. He did not believe that cities had the opportunity or the inclination to engage in a conversation with their communities. He felt that it was commendable that the City is undertaking this process because it will give the Council a clear sense of the direction it is to take. It will not be the Council stating that the measure is important and what the City needs to do, but rather, the community stating that it is important and what needs to be done. He recommended focusing on the education portion at the front end of the process as it is vital. He indicated that he was not leaning toward conducting three surveys as two surveys may be sufficient. He recommended that it be announced that should the City agree to move forward with a ballot measure, that the ballot measure would be proposed for November 2006 as this would be the appropriate timing in terms of planning and Council terms. He noted that he, Council Member Tate and Mayor Kennedy's terms on the Council will expire at that time. Therefore, it will be an opportunity for them to have this conversation in the larger context. He felt that it made sense to move forward and supports appropriating \$50,000. If the scope of work needs to be expanded, the Committee can return to the Council for additional funding.

Mayor Pro Tempore Tate indicated that the Committee has made an assumption that should the community conversation indicate proceeding with a ballot measure, a ballot measure would follow in November 2006. It was his hope that everyone, including those individuals up for re election, would assist with this campaign, in addition to whatever elected seat one is running for.

Council Member Carr agreed to state upfront that the target ballot date would be November 2006, should the community conversation lead the Council to a ballot measure. He stated that he would support the requested funding and that he was pleased that the Committee returned with a recommendation to seek professional assistance. He noted that City Treasurer Roorda mentioned that this has been a discussion item through all council members' rotation through the former Finance & Audit Committee. Further, this item came before the Council three different times for conversation; indicating that they were difficult conversations for the Council to have with no comments from the public. It was his belief that it was time for the Council to engage professional services to proceed with this work.

Mayor Kennedy opened the floor to public comment.

Dan Ehrler said that upon learning about the conversations and direction of the Council, the Chamber of Commerce is very interested in this conversation/process and wants to take a pro active role in assisting in the entire process. The Chamber of Commerce is willing to assist the Council in educating the community through their breakfast or business forums; utilizing the Chamber's communication system or other means of assistance in dealing with the education process, identifying alternatives, understands the results if no action is taken, etc. He stated that the City's financial situation does not fall only on one segment of the community. The business community and the residents of Morgan Hill need to share in these challenges. He said that the Chamber of Commerce wants to do its part and take its responsible role and do everything in support of the year long community conversation.

Bob Martin complimented the Council for pursuing this initiative. He felt the Council's action will speak as loud as its deeds, and that in executing this process, will give individuals a sense of ownership, authorship, and a sense of belonging to Morgan Hill. It was his belief that citizens will keep their dollars in Morgan Hill if the Council can reinforce that their voices are being heard. He recommended that the City make the community aware that this is an open dialogue and that based on the information received, if it necessitates a ballot measure, the City will put one forth that is based on the feedback received, and reinforcing the services the community wants.

Chris Bryant encouraged the Council to include the South County Realtors' Association and their weekly meetings as a means of communicating and obtaining feedback.

No further comments were offered.

City Manager Tewes indicated that he has the results of a statistically significant survey of the community that was conducted less than two months ago. He presented the results and a summary prepared by the City's professional consultants. The results demonstrate two messages: 1) the City should be encouraged by the extent of the positive views the community has about city government, in general, and about specific services. 2) The Council will find the information useful as the City initiates the conversation with the community about the mix and level of city services, and how they are to be paid for. He stated that 400 individuals who are likely to cast ballots in the November 2006 general election were interviewed and that the sampling error was less than 5%. He proceeded to address the results of the survey via a power point presentation. He noted that the results show that there is community support for a variety of city services and functions. However, the threshold has not been met on a specific tax measure that gains sufficient support to pass.

City Manager Tewes informed the Council that the consultants have concluded, from the data, that voters are generally highly pleased with the quality of life in Morgan Hill; housing costs are the only issues that most voters perceive as a local problem. Voters believe that city government, in general, and specific departments, are doing a good job. Voters recognize the negative impact of the State budget. Approximately 3 in 5 voters (60%) would be willing to support a small tax increase to fund local services; but that no specific funding mechanism receives this level of support. Voters place the highest priority on funding improvements to public safety and services to children. Further, that any ballot measure must include strict financial accountability provisions, including a 10-year sunset. He indicated that over all, most voters in Morgan Hill see little urgency in approving a tax increase at this time. The City's consultant concluded that voters should be educated to the City's needs and the reasons for placing a ballot measure before the voters to raise additional revenues. The City's consultants further indicate that although each case is specific, they in general like to see support for a general tax at more than 60% and more than 70% for a special tax. In terms of benchmarks, he indicated that the City is not yet in a position where one can predict that if the City placed a ballot measure before the voters of Morgan Hill, it would pass. Therefore, this demonstrates the importance of the community conversation. It was his hope that the Council sees the information developed by the City's consultants as encouraging and useful. He indicated that staff would provide the actual poll results to the Council and members of the press before the end of the evening.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Added** \$50,000 to the Proposed 2005-2006 General Fund Budget for the Cost of a Consultant to Manage the Year-Long Community Conversation Process.*

27. INTERVIEW AND APPOINTMENT PROCESS FOR BOARDS AND COMMISSIONS

Council Services & Records Manager Torrez informed the Council that at the May 28, 2005 meeting, Council Member Grzan requested that staff agendize the discussion of the Council's interview and appointment process. She informed the Council that staff requested that City Clerks from other jurisdictions advise as to their respective Councils' interview and appointment process. The responses received have been tabulated for Council consideration.

Council Member Grzan said that in the last opportunity to appoint to a Commission, the Council rated applicants 1-5. He said that under the current process, if there are 3 vacancies with only 3 applicants interested in appointments, all applicants would be appointed. He recommended that the Council consider a method to discriminate between a good candidate and a candidate that is not as qualified as other candidates. He said that the City may receive an application from a single issue individual or perhaps an individual who is upset about an issue. It was his belief that with the current process, all candidates would be appointed and that he did not believe that it would be to the City's advantage to appoint unqualified applicants. He stated that he would look toward a different scoring mechanism. For example, Council members are given the ability to score an applicant from 1 to 10 points. However, each applicant would have to receive a minimum of 26 points to qualify for appointment. If all council members were to give an applicant 5 points or below, an applicant would not be appointed. He suggested that the Council consider having an applicant receive a minimum score as he would like to make sure that everyone appointed has the skills and ability to fulfill the role of a commissioner.

Council Member Sellers indicated that he has often stated that the most difficult duty he has had to perform on the Council is to appoint individuals to boards and commissions. This is not because he was trying to decide between equally and qualified individuals, but the opposite, as most individuals are outstanding applicants. He felt that the Council needs to take this into account and that the Council does not turn away individuals who are eminently qualified. He noted that some cities include a discussion process and a gap between the time interviews are conducted and the time appointments are made. He felt the Council needs to incorporate the opportunity for the Council to have a discussion about the applicants. He has spoken to other cities where each council member has the opportunity to make one appointment to the planning commission. This process works in cities where there is division or factions between the council. He did not believe that these issues exist in Morgan Hill. He would support continuing with the interview and ranking process, adding a discussion period to achieve Council Member Grzan's goal (e.g., allow the Council the opportunity to discuss why council member(s) believe that an applicant(s) was outstanding or why they were not). He noted that several years ago, the Council instituted a policy that allows the appointment of a non Morgan Hill resident to serve on a board or commission. This was done specifically because of an eminently qualified individual who was not a city resident, but resides close to the City. He recommended that the Council limit the appointment of a non Morgan Hill resident. He indicated that the library impacts the outside

community as it does the city and that it would be appropriate to appoint a citizen who is not a citizen of Morgan Hill to that commission. He noted that the City has a hard time filling vacancies on the Architectural Review Board because of the specific qualifications to serve on this Board. He felt that the Council could consider appointment of citizens who do not reside within the City Limits in these two cases. However, he noted that the Council has had a significant number of qualified applicants wishing to serve on the Planning Commission, Parks & Recreation and other commissions. He did not know if it made sense to continue the policy of appointing an individual who does not reside within the city limits to these commissions when the City has a qualified applicant residing within the city limits. He recommended that the Council review this policy as well. He recommended that the Council revise its process and allow the Council to have a public discussion, at some point, before taking a vote to appoint. He felt that this would go a long way toward solving the problem(s). Further, that the Council look at residency appointment requirements as well.

Mayor Kennedy indicated that there were two recent situations where there were concerns about appointments. He felt that a problem was attributed to the fact that the Council did not have an opportunity to discuss the consequences based on point ranking. He recommended that the Council proceed to interview applicants at one meeting and vote at a subsequent meeting. Another option is for him to take input and return to the entire Council with a recommendation for appointment to the board or commissions, followed by a vote. He indicated that a responsibility of a directly elected mayor is to make appointments to boards, commissions and committees. He noted that it has been his policy to involve the Council directly in all appointments. However, it was his belief that some time was needed from the time the Council interviews applicants and the appointment process. He did not believe that the Council needs to vote the day interviews are scheduled. He would return to the Council with a recommendation or the entire Council could return with an appointment recommendation at a subsequent meeting. He felt that it would be important not to make an appointment the evening of the interviews.

Council Member Carr said that the Council may be trying to fix something that is not broken. He stated that he understood the interest of trying to create a dialogue. However, he expressed concern that by creating a time lapse between the time of interview and the time the Council make appointments may add politics to the process. He expressed concern that the Council will interview individuals and that in the interim, Council members would be lobbied. He noted that the current process allows him to make his decision based on the answers presented and that he is able to select the best candidate to fill vacancies not knowing how other council members are ranking other applicants. Not knowing how other council members rated individuals would not lead to altering numbers. He said that the process in place at this time is A-political and does not allow manipulation of the process. He noted that the Council does not assign questions, limit the questions asked, or ask the same question to every candidate. He felt that the Council has a fluid opportunity in the process in place at this time.

Council Member Grzan noted that one city provides candidates questions prior to the interview. He stated that he would like all candidates to have the opportunity to initially answer the same questions. This would place everyone on the same playing field. He indicated that at the last meeting the Council conducted interviews; Council members developed different questions for different candidates and felt that this may have been unfair. He recommended that applicants be given a set of questions that they are

to respond to and that the Council is free to ask follow up questions. This would allow the Council to hear applicant's view points on issues that are important and hear them all respond to the questions to achieve a fair appraisal.

Council Services & Records Manager Torrez informed the Council that staff tailors the applications to the various boards and commission. She indicated that the majority of questions on the applications are standard ones and that there are a couple of questions targeted toward a specific board or commission.

Mayor Pro Tempore Tate agreed with all the comments expressed. He stated that he has seen more controversial situations than one. He stated that there have been some situations where the Council has made appointments that he would have preferred not to make. However, they were the only applicants. Therefore, what Council Member Grzan is proposing may have merit. However, he agreed with Council Member Sellers' comments that the overall quality of the applicants is extremely high in most cases as well. He agreed with Council Member Carr that you do not want to bring politics into play by having a delay. However, it was his belief that there needs to be an opportunity for discussion and opportunity to exchange opinions among Council members before taking a vote. Discussion would allow disclosures about the various candidates as it is not always just the interviews that should be the basis for appointment. He felt that a lot of the controversies seem to deal with incumbent candidates. He suggested that there be special focus on what the Council does with incumbent candidates. It was stated that there is a policy in place that allows one planning commissioner to be appointed who resides outside the City Limits. He felt that Council Member Sellers' comments have merit that the Council would prefer to appoint all city residents. He did not know whether the Council would not reappoint an individual because they reside outside the city limits because a citizen who resides within the city limits wants to be appointed. He would like a process that would include discussion without a large delay that would open the process to politics or lobbying.

Council Member Carr stated that he did not want the Council to provide a disincentive for citizens to apply for the City's boards and commissions. If the City had double the amount of candidates for every application across the board, the Council can amend its policies. However, he noted that the City struggles to recruit citizens to serve on boards and commissions and convincing incumbents to reapply. He felt that standing before the Council may be an inhibitor to citizens. If it is felt that improvements to the process would get the City more applicants, he would support them. He felt that the first goal is to encourage more citizens to apply to serve on boards and commissions. It was his belief that the ARB has a seat that can have an appointment from outside the City Limits. The Parks & Recreation Commission also has an appointment that would allow appointment from within the city's boundary.

Council Member Grzan agreed that the City needs to attract more individuals to apply to boards and commissions. He felt the City should honor, respect and recognize time commitments and the efforts of its boards and commissions. He acknowledged that the City struggles to recruit to fill vacancies. He suggested that the Council take a look at how the City can make boards and commissions attractive; making the job attractive, challenging and rewarding (e.g., stipend for attending meetings).

Mayor Kennedy suggested that he, City Manager Tewes, and Council Services & Records Manager Torrez take the comments made this evening; meet and return to the Council with a recommendation to address the issues raised.

Action: *It was the consensus of the City Council to accept the Mayor's suggestion to have him and staff return with a recommendation on July 6, 2005 to address the issues raised this evening.*

City Council and Redevelopment Agency Action

OTHER BUSINESS:

28. JULY 2005 MEETING SCHEDULE

Council Services & Records Manager Torrez informed the Council that in February 2005, when staff inquired as to the Council's summer meeting schedule, the Council recommended that staff consider consolidation of the July 20 and the July 27 meeting, if possible. She stated that staff reviewed the agenda and work items that need to be considered by the City Council and found that should the Council wish to cancel one of its meetings, the July 20 meeting is the one to cancel.

Mayor Kennedy recommended the July 6 meeting be held, a special meeting is held on July 13 to conduct Planning Commission interviews, consolidating the July 20 meeting with the July 27 meeting.

Mayor Pro Tempore Tate noted that the Mayor's proposal assumes the Council will successfully come up with an appointment policy on July 6.

Council Member Carr did not see the benefit of moving a regularly scheduled meeting up a week. It was his belief that it was the idea to consolidate a meeting and have one fewer meeting in the month of July. He noted that the Council would be maintaining the same number of meetings in July, bumping one meeting up a week. He did not see an advantage to the amended schedule. He indicated that the Public Safety & Community Services Committee is scheduled to meet on July 20 at 5:00 p.m.

Council Members Carr and Sellers recommended the Council keep its regular meeting on July 20.

Mayor Pro Tempore Tate recommended that the July 20 meeting be dedicated to conducting interviews.

City Manager Tewes informed the Council that the City received a state grant to improve traffic conditions in front of Britton Middle School. Staff would like to be able to construct these improvements prior to the school opening. He indicated that the project has been designed and that it is awaiting a Caltrans engineer to state that the project is ready to proceed. This authority has not been granted. If the City cannot get this project approved by July 13, the City cannot reasonably expect that it can be completed before school begins. He clarified that the City cannot take the project out to bid until the design has been approved by the state as this is a state grant. He said that although this is an important project, he was not sure that the Council needs to reorganize its schedule around it.

Action: *It was the consensus of the Council to **retain** the Council/RDA regular meeting schedule of July 6, July 20, and July 27. Planning Commission **interview's to be conducted** on July 20 at 7:00 p.m.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Kennedy stated that it has been his policy to recognize significant groups and achievements. He indicated that Live Oak High School has done amazing things with their athletic teams (softball, baseball, track, swimming teams). He would like to recognize these teams and requested that this recognition be placed on an upcoming agenda.

Mayor Kennedy requested the discussion about increasing Council & Mayor salaries be agendized at a future meeting, not a part of this budget process.

Council Member Grzan requested the discussion on the selection of a City Attorney be agendized.

Council Member Sellers indicated that the Community & Economic Development Committee will be considering the placement of a Measure C exemption ballot measure for the downtown next week and shortly thereafter to be discussed by the Council.

Mayor Pro Tempore Tate stated his disagreement with any amendments to Measure C until the Council tries the proposed amendments to the Measure C standards and criteria. He noted that a lot of work was conducted by the Measure C committee to make it work for the downtown. The Planning Commission incorporated criteria to be applied to the downtown and found allocations for the downtown. Now, there is talk about changing Measure C before trying the changes to the standards and criteria. He stated his disagreement with moving forward with a ballot measure.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:23 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 22, 2005**

CALL TO ORDER

Chairman/Mayor Kennedy called the special meeting to order at 7:02 p.m.

ROLL CALL ATTENDANCE

Present: Agency/Council Members Carr, Grzan, Sellers, and Chairperson/Mayor Kennedy
Absent: Agency/Council Member Tate

DECLARATION OF POSTING OF AGENDA

Deputy Agency Secretary/Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

Chairman/Mayor Kennedy led the Pledge of Allegiance.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

Craig Hulse addressed the Council regarding street lights that are going to be added to Santa Teresa Boulevard. He stated that the installation of these lights will take area from his back yard and the light will make it hard to sleep at night because it will be disturbing to his family. He is also concerned that it will affect the value of his property. He does not believe there is a need for the lights to increase the safety because there is no place for pedestrian traffic. He would like to see the installation of these lights delayed, and if that cannot be done, he would request that something be done to keep the light from shining into his home so he can sleep at night. He also suggested that the city install stop signs at Native Dancer and the bridge to slow traffic.

Mayor Kennedy stated that he would have city staff look into this issue.

Mr. Tom Barger and Mr. Steven Serchia introduced themselves to the Council to let them know that they are going to be re-opening the bowling center in Morgan Hill. They stated they are excited about the project and are committed to bringing a quality entertainment center to Morgan Hill.

The Mayor thanked them for what they are doing with the bowling center and stated the community will be glad to have it back in operation.

There being no further comment, the public comment was closed.

Redevelopment Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Sellers and seconded by Agency Member Carr, the Agency Board unanimously (4-0, with Tate absent) **Approved** Consent Calendar Item 1, as follows:*

1. **MAY 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.

City Council Action

Mayor Kennedy pulled Item #6 and Council Member Sellers pulled Item #7 from the Consent Calendar for discussion.

CONSENT CALENDAR:

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (4-0, with Tate absent) **Approved** Consent Calendar Items 2-5 and Item 8, as follows:*

2. **MAY 2005 CITY OF MORGAN HILL FINANCE & INVESTMENT REPORT**
Action: **Accepted** and **Filed** Report.
3. **RESOLUTION APPROVING APPLICATION FOR FEDERAL SURFACE TRANSPORTATION PROGRAM FUNDING FOR 2005-2006 STREET RESURFACING PROGRAM**
Action: **Adopted** Resolution Supporting the Application for Federal Surface Transportation Program (STP) for the 2005-2006 Pavement Resurfacing Project.
(Resolution No. 5912)
4. **APPROVAL OF PACIFIC GAS AND ELECTRIC (PG&E) FEES FOR INDOOR RECREATION CENTER**
Action: **Approved** Payment of Fees to Pacific Gas & Electric (PG&E) for the Indoor Recreation Center in the Amount of \$42,307.23.

5. **APPROVE FINAL MAP FOR CAPRIANO PHASE VII (TRACT 9723)**

Action: 1) **Approved** the Final Map; and 2) **Authorized** the Recordation of the Map Following Recordation of the Development Improvement Agreement.

6. **DONATION FROM HOSPIRA, INC.**

Project Administrator Eulo thanked Hospira for their outstanding donation of time and workers at this year's City Beautification Day. Their crew worked on cleanup of the civic center area. He introduced Nellie Bushman from Hospira.

Ms. Bushman presented Mayor Kennedy with a check for \$2,500 as a donation to the Beautification Day fund. She also presented the Mayor and Council with t-shirts from Hospira. She thanked the city for organizing the Beautification Day event and stated that they are looking forward to participation next year.

Mayor Kennedy thanked them for the generous donation of funds and for the wonderful clean up work they did around the civic center.

Action: On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (4-0, with Tate absent) **Approved** Consent Calendar Item 6, as follows: 1) **Accepted** the Donation; and 2) **Appropriated** the Donated Funds in the 2004-2005 Budget.

7. **SISTER CITY COMMITTEE REQUEST FOR REIMBURSEMENTS**

Council Member Sellers stated that he is not concerned with the amount being requested because he feels the request is not out of line, but wants to make sure the Council is not setting a precedent of reimbursement of funds expended prior to Council approval. He stated that it is important that there be a standard set that funding needs to be requested prior to expenses being incurred.

Mr. Foggiato, the Chairperson of the Sister City Committee, gave the Council an explanation of the expenses incurred, and stated that they are in the process of developing a budget so that this will not happen in the future. He stated their plans are to become self-funding as a non-profit organization soliciting donations. All major events will be budgeted first, and any requests for funding from the Council will be presented prior to the expenditure of funds.

Action: On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (4-0, with Tate absent) **Approved** Consent Calendar Item 7, as follows: **Approved** this One-Time Request from the Sister City Committee for \$2,268.39 in Expenditures that are not Directly Related to Formal City Actions.

8. **AQUATICS CENTER OPERATIONS PLAN**

Action: **Directed Staff** to Provide an Aquatics Center Operations Plan at the August 3, 2005 City Council Meeting.

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Action: *On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Carr, the Agency Board/City Council unanimously (4-0, with Tate absent) Approved Consent Calendar Items 9 and 10, as follows:*

9. **ADOPTION OF FISCAL YEAR 2005-2006 BUDGET**

Action: *1) Approved the Resolution of the City of Morgan Hill Adopting the Fiscal Year 2005/2006 Annual City Budget and Adopting Appropriations Limit for Fiscal Year 2005-2006; 2) Approved the Resolution of the Redevelopment Agency of the City of Morgan Hill Adopting the Fiscal Year 2005-2006 Annual Agency Budget; 3) Approved the Capital Improvement Plan; and 4) Approved the 2005-2006 South County Regional Wastewater Authority Budget. (Resolution No. 5913 and MHRA-255)*

10. **AGREEMENT WITH MORGAN HILL COMMUNITY FOUNDATION FOR CENTENNIAL MORGAN HILL ACTIVITIES**

Action: *Authorized the City Manager/Executive Director to Prepare, Execute, and Implement an Agreement with the Morgan Hill Community Foundation in an Amount Not-to-Exceed \$54,500 for Centennial Celebration Activities for Fiscal Year 2005-2006.*

City Council Action

CONSENT CALENDAR: (Continued)

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (4-0, with Tate absent) Approved Consent Calendar Item 11, as follows:*

11. **APPROVED JOINT SPECIAL CITY COUNCIL AND SPECIAL PLANNING COMMISSION MEETING MINUTES OF JUNE 8, 2005**

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (4-0, with Tate absent) Approved the Amended staff report submitted to the Council as a supplemental document to the agenda packet for Consent Calendar Items 12, as follows:*

12. **APPROVAL OF TIME EXTENSION REQUEST FOR SUBDIVISION IMPROVEMENT AGREEMENT FOR ALCINI PARTNERSHIP/MAST AVENUE**

Action: *Granted an extension of time from September 1, 2005 to September 1, 2007.*

Redevelopment Agency and City Council Action

PUBLIC HEARINGS:

13. ACTON MUSEUM RELOCATION AND RENOVATION PROJECT (Resolution No. 5914 and MHRA-256)

Director of Business Assistance and Housing Toy presented the staff report as provided in the agenda packet.

Agency/Council Member Grzan stated that he thought previous reports had placed the cost of this project at significantly less than \$350,000. He also asked if the house could be re-built for less cost than moving the original structure.

Mr. Toy responded that the costs of only the move will be around \$50,000-\$75,000; and the cost of improving the site is anticipated to bring the costs near to the \$350,000 amount. The cost of rebuilding the house would be close to the same amount; in addition, an EIR would have to be done which would add to the cost. The funds are to be drawn down only as needed, but the staff fully anticipates spending all the funds to enhance the project. They will know more after the bids are received for the project.

Chairman/Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Agency/Council Member Sellers stated that he was impressed with the creativity, ability and accuracy the Historical Society brings to projects with very little resources. He has spoken with the President of the Historical Society and is confident they are going to maximize the use of the funds; and he thanked the staff and Society for finding a way to get this project done.

Agency/Council Member Grzan agreed, and stated that this will be a wonderful addition to the site and will help make it representative of the early days of the town of Morgan Hill.

Action: *On a motion by Agency/Council Member Sellers and seconded by Agency/Council Member Carr, the Agency Board/City Council unanimously (4-0, with Tate absent) **Adopted** Resolutions Making the Appropriate Findings and **Authorized** the Executive Director/City Manager to do everything necessary to Execute and Implement the Agreement with the Historical Society for the Relocation and Renovation of Acton Museum to the Villa Mira Monte Site.*

City Council Action

OTHER BUSINESS:

14. SILICON VALLEY SOCCER COMPLEX

Acting Recreation and Community Services Division Manager Dile presented the staff report as provided in the agenda packet. She suggested that since the San Jose Soccer Complex Foundation has withdrawn from the development of the Silicon Valley Soccer Complex at Sobrato High School, the Council may wish to reprogram the \$980,000 that was allotted to this project in the CIP budget adopted earlier this evening.

Mayor Kennedy asked if CYSA is looking for another site. He expressed his concern for the loss of the financial benefits that soccer has brought to Morgan Hill; and asked if we can speak with the CYSA and the City of San Jose regarding the proposed Sobrato site.

City Manager Tewes responded that CYSA has expressed an interest in extending their lease with Morgan Hill, but they are looking at several locations for their regional facilities; but not in the Bay Area since their territory covers most of the state.

Ms. Dile responded that the City of San Jose is pursuing with different venues the use of the Sobrato site for soccer, but the scope of that is not yet known.

Council Member Grzan noted that there would be significant advantages to us if another city will fund the facility and we will receive the benefits. And the dollars that we had allotted for this project can be used elsewhere.

Mayor Kennedy stated that it was his understanding that the problem was that the City of San Jose wanted to maintain control of the use of the site, which discouraged the Soccer Foundation from proceeding with their use of the site.

City Manager Tewes stated that the City of San Jose owns the property and felt that the facility should be a community facility since it was owned by the taxpayers. The Soccer Foundation, which is a private foundation, wanted to have some of the access limited to their use. In the end the two parties could not find a balance of the two needs, so the Soccer Foundation will be looking elsewhere. The City of San Jose will go ahead with the facility as a community based soccer group use; and has stated that they have no expectation of Morgan Hill contributing to the development of the facility.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Council Member Sellers stated that this may be good news and there are two actions we should undertake. We should let San Jose know how important this facility is to the Morgan Hill community's

children and make sure that we are in on the discussions so that it is designed to be adequate. The second issue is what to do with the \$980,000 we now have available; and we need to make recommendations on how that might be reprogrammed for economic development.

Council Member Carr expressed his strong disappointment in the Soccer Foundation after putting two years of work into this project. The Foundation had assured the Public Safety and Community Services Committee that they were not looking at other sites. He understands their frustrations with not being able to come to an agreement on exclusive use with San Jose, but he is disappointed they did not come to Morgan Hill to look at other sites together. He wants the Council to be cautiously optimistic about how San Jose will handle this site; and wants to monitor the impacts on Sobrato High School and the neighboring mobile home park. He also wants to be very careful and thoughtful in the use of the \$980,000.

Mayor Kennedy noted that the financial impact on the businesses along Condit will be significant with the loss of the soccer complex, and hopes that we don't give up on trying to find a way to keep a regional soccer complex in Morgan Hill. He would like the Council to support looking for opportunities to make this happen.

Council Member Sellers stated that this issue was originally assigned to the Public Safety and Community Services Committee, and they should continue the work on this issue.

Council Member Grzan stated that he feels it should be assigned to the Parks and Recreation Commission, since they are the ones given the authority by the Council to look at recreational opportunities.

Council Member Sellers stated that this issue is not about figuring out a use for the site, but is a political issue of working with San Jose to express our concerns. He also stated that it is a good idea to have the Parks and Recreation Commission come up with suggestions for uses and shared opportunities.

Mayor Kennedy stated that this covers a lot of issues such as economic and regional services and is more of a Council decision. The Parks and Recreation Commission would be more appropriate to study a specific recreational use, such as the need for local teams for recreational facilities. Perhaps it needs to be put on the agenda for further discussion and recommendations from the staff.

Council Member Carr noted that this issue is not a part of the Workplan of the Parks and Recreation Commission, and they already have a very full Workplan.

Mayor Kennedy suggested that the staff come back with thoughts on this issue, and make recommendations of whether it should go to a committee, and which subcommittee it should be assigned to.

Council Member Carr stated that the Public Services and Community Services Committee will be happy to continue the discussion about regional recreation.

Council Member Sellers stated that there needed to be discussion of the reprogramming of the funds as well.

Mayor Kennedy stated that at this time there appeared to be consensus of at least three Council Members to send it back to the Public Safety and Community Services Committee.

Action: *By consensus, the City Council **Accepted** the report, and assigned the Public Safety and Community Services Committee to pursue the issue of regional recreation and coordinate with the City of San Jose in their development of the Silicon Valley Soccer Complex.*

15. URBAN LIMIT LINE/GREENBELT STUDY

Consultant David Bischoff presented the staff report as provided in the agenda packet, and presented a power point presentation summarizing the main points of the staff report binder. He noted that the staff is only asking the Council for permission to proceed with the further development of this process.

Mr. Bischoff stated that the Council has been provided with an amended version of the Matrix chart, which corrected a clerical error in Item #8 to list the actual number of acres involved. This was left off of the version provided in the agenda packet. In addition, he has also provided a map which shows the comparison of the three proposals.

He reviewed the background history of the development of the Urban Limit Line/Greenbelt study, the staff recommendations given in the staff report, the correspondence and speakers comments received and evaluated by the staff, and the matrix showing the comparative analysis of the five proposals previously requested by the Council. All of this information is presented in detail in the staff report and binder provided in the agenda packet.

Council Member Grzan asked for an estimate of how much residential land is currently located in the UGB and asked for clarification of how many years out the ULL is projecting. He also asked the City Attorney for clarification of why he recommended the word “permanent” be removed.

Mr. Bischoff responded that in the three proposals the KBT added 1500 acres, the staff added 1900, and the advisory committee added 2200. He could only give a very rough estimate of the time, and that would be an estimate of the year 2050 which would include the full development of the SE quadrant area. He also stated that this is only an estimate of density and has not been studied in detail. Also, some of the land involved is County land that does not have any designation as yet, so there is no way to know what it will eventually be designated. A very rough estimate of the population under the current Measure C in 2050 would be 55,000-60,000.

Interim City Attorney Siegel responded that under California law it is difficult to make a decision that cannot be changed. The word “Permanent” is a word that prohibits future Councils from making a change. Things can be long lasting, but it is very difficult to make something permanent.

Mayor Kennedy remarked that we do not know what the density of residential housing will be, but we do know that there is greater emphasis being placed on higher density and this could change the whole picture in the future.

The Council thanked David Bischoff and the staff for all the excellent work done on the ULL over the last 2 years, and for accomplishing the difficult task of bringing this issue to a consensus.

Council Member Sellers asked how long it will take to do the Industrial Land Market Study, and if the survey will be extensive enough to cover commercial as well as industrial. He stated it is crucial to identify what we want to get out of the study, including the discussion of the attractiveness of land for an industrial use.

Mr. Bischoff responded that the study will be done in the next fiscal year, and the issues Council Member Sellers specified would be a major component of the study.

In response to a question by Council Member Carr, Mr. Bischoff stated that the city limit line and the UGB line in the SW quadrant are coterminous.

Mayor Kennedy opened the public comment.

Alex Kennett thanked the staff for a wonderful job of preparing a logical and well balanced conclusion. He stated he feels badly for the land owners, as this is not going to speed up the process for them. He also stated that voters can make issues permanent if they wish. In response to a council inquiry as to whether he agreed with the staff recommendations or still held to the KBT proposal, he stated that, for his part, he feels that a lot of the KBT input is included in the staff recommendations and that this is something they can work with.

Andy Faber spoke as a representative for Keven and Charlene Lai and reiterated his request that the Lai property be included in the ULL, which could easily be done. He stated that the Lai property is not developed and is in the Williamson Act, and is not in an isolated area. If it is ever developed it would need to be annexed to the city. He stated he is glad that the term “permanent” has been removed from the report, and he would suggest that they also remove the “20 year time frame of the UGB” from the replacement language being added. He feels that to plan beyond 20 years is an exercise in speculation, and he requested that this language be deleted.

Pete Gale and Ron Key addressed the Council regarding an area located on the corner of Spring Avenue and Dewitt, requesting that the line be expanded to include this section. This area is enclosed between city boundary lines on both sides and already has city utilities. Adding it would simplify the provision of police and fire services for these parcels. He provided 3 letters from property owners and a map of the area, which will be scanned into the permanent record.

Michele Beasley, representing the Greenbelt Alliance, thanked the staff and the Council for their work on this project. She encouraged the Council to “build up, not out”, using more density and taking advantage of the existing infrastructure; to avoid sprawling in order to protect the charm of Morgan Hill

as a rural community by protecting the greenbelt, and to differentiate Morgan Hill from the grown together cities up the Peninsula. Morgan Hill has acres of undeveloped land within the UGB, and it would be better to develop this land rather than sprawling out on the fringes of the community. She expressed concern over the ULL no longer being defined as “permanent” as it makes it more difficult to permanently protect greenbelt lands.

Art Puliafico spoke on the development of the SE quadrant. He feels the property owners’ proposal is about providing the funds to permanently pay for the open space areas in the SE quadrant through development. The property owners are willing to fund a burden rate of approximately 10% of the urbanization value, which would fund approximately 275 acres of open space in the SE quadrant. This would provide about 6,300 acres outside the ULL line. He feels that is commendable for property owners to come up with such a big number; and feels they understand what the city is trying to accomplish. They want to make the open space permanent in that area rather than waiting 25-30 years for the area to provide funds to pay for open space if it is still there. He wants the staff to determine how many acres are being added beyond the UGB by all the proposals, and to remember the land east of Hill Road is already parceled and potential development is low.

Brian Schmidt, representing the Committee for Green Foothills, agreed with the City Attorney that no City Council can constrain a future City Council; but stated that there is no rule in the law against the Council stating their intent for the ULL to be permanent. He suggested that if they do drop the permanence concept, they should draw the ULL tighter, particularly the areas on Half Road, and it can be revisited later. He suggested that the issue of the SE quadrant be revisited before the next General Plan revision in 3-4 years. He stated he was glad that there was not a recommendation for an open space impact fee. He stated that Morgan Hill should keep in mind what is going on in Coyote Valley and should consider setting up the same system as Gilroy has of one acre for one acre mitigation for agricultural land, which would help preserve some of the land for Morgan Hill’s future.

No further comments being offered, the public comment was closed.

Mayor Kennedy commented that, as Chair of the ULL Committee, it has been a lengthy process, and from the outset they tried to involve all interested and affected parties in the process which has resulted in a good work product being produced. They recognize that it is a very contentious property, and for a lot of the long time members of the community the property is the future family inheritance and is very important to those involved. However, for a long time the residents of the City of Morgan Hill have desired a greenbelt around the city to distinguish it from other cities and to protect the rural quality of life in Morgan Hill. He stated that he would be supporting the staff recommendation because it is a good start and allows us to move forward.

Mr. Bischoff responded to the comments made by one of the speakers this evening, Mr. Gale, regarding the Spring Avenue property inclusion request. Mr. Bischoff noted that the map the speaker was using was out of date, and that the Committee has already amended the map to include the West Hills Community Church Property and the properties on Spring Avenue.

Council Member Grzan questioned the staff recommendation of the one home being allowed to be built on the Anchorpoint property on Dewitt Avenue. It was his understanding that the committee did not want any homes built on the property along Dewitt.

Mr. Bischoff responded that staff has always felt that it would be appropriate to have a house there so that the owners could take on the responsibility for the maintenance of the property. The home would be located in an area that would not be visible from Dewitt, which would satisfy the objective of the Committee. He reminded the Council that staff is not asking them to make any definitive decisions tonight, but to just give the staff authority and flexibility to continue to work with Anchorpoint on this project and see what can be worked out that will be satisfactory to all involved. Ultimately, it will return to the Council for the final decision.

Mayor Kennedy stated that he has met with Mr. White of Anchorpoint Academy and Mr. Bischoff on this proposal, and it appeared to him that the proposal would meet the objectives of the Committee's recommendation that there be no housing on the hillside facing Dewitt that would destroy the view. This would allow private property owners to own and manage that property. This compromise made sense to him.

Council Member Grzan questioned whether there would actually be any additional maintenance costs incurred by the city whether or not this house is built.

Mr. Bischoff reported that at this time the city has an arrangement with an adjacent property owner to run his cattle on the property to keep the weeds under control. Building a house on the property would eliminate the problem of an absentee landlord, and would provide better potential for maintenance.

Director of Community Development Molloy Previsich stated that at this time the staff is just trying to establish the "project description" for the General Plan amendment that will be an application that will go through a normal process of study and review by staff and public hearings before the Planning Commission and City Council. One of the reasons for the staff recommendation to go ahead and allow the house, is because that would be the worst case CEQA analysis; and the Council will still have all their options open through the public hearing process to decide whether this is what they want to have happen.

Council Member Carr asked if the project description would use the staff proposed ULL in places where it is different from the advisory committees' recommendation. For example, the line would be along Hill Road rather than at the foothills.

Mr. Bischoff responded that yes, this is the staff recommendation.

Council Member Sellers stated that this recommendation makes sense to him. He saw no reason to go east of Hill Road given the development that has already occurred there. His concern has been that if we don't make some of these hard decisions over the next year or so, that there will be development of the SE quadrant that will preclude us ever having permanent open space or more appropriate development in that area. He feels it is important that we continue down this path and try to determine what will be

done in that area. He wants to make sure the Industrial Land Market study gets the right questions answered, such as the appropriateness of the property and some other long term issues. Wants to keep moving this process forward and is supportive of the recommended action this evening.

Council Member Grzan wanted to clarify that wherever the line is drawn outside of the city limits is not in our control, and we need to have an agreement with the County on how that land will be used. We are being accused of taking land away and changing the way that people can use their land, but that is not the case. The people who are there now can use and develop their property in accordance with the County guidelines, and where we put this line does not change that at all unless we have an agreement with the County on how those lands are to be used. One of the things proposed by the Committee is that we look at some of the agreements that the County currently has with the cities of Milpitas and Monte Sereno, where they do have some negotiations regarding hillside lands. He thinks that we should consider doing that sometime in the future as part of the staff recommendation.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Sellers, the City Council unanimously (4-0, with Tate absent) **Accepted** the Staff Recommended “Project Description” for a General Plan Amendment (as Presented in Attachment I.E.) (For all of the City’s Sphere of Influence area Except for the Southeast Quadrant); and **Directed** Filing of the Application and Preparation of Environmental Review. (The GPA Amendment will include Establishment of the Urban Limit Line, Amendment of the Urban Growth Boundary Line, and Incorporation of a Greenbelt Diagram and Policies).*

Action: *On a motion by Mayor Kennedy and seconded by Council Member Sellers, the City Council unanimously (4-0, with Tate absent) **Directed** Staff to Initiate Consultant Selection Activities for the Industrial Land Market Study (ILMS), to Address Existing and Potential Industrial Lands Within the City’s Sphere of Influence.*

Action: *On a motion by Mayor Kennedy and seconded by Council Member Sellers, the City Council unanimously (4-0, with Tate absent) **Directed** Staff to Work with Santa Clara County on County Development Regulations Related to Reducing the Visual Impacts of New Hillside Development.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Council Member Grzan asked that Council recognition be given to Carol Holzgrafe and Walt Glines of the Morgan Hill Times for their service to the community.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 2

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority	Government Code 54957
Public Employee Performance Evaluation:	City Manager
Attendees:	City Council, City Manager

CLOSED SESSION ANNOUNCEMENT

Interim Agency Counsel/City Attorney Siegel announced there would be no discussion of Closed Session Item #1, anticipated litigation, during Closed Sessions. Only Closed Session Item #2 would be under discussion.

OPPORTUNITY FOR PUBLIC COMMENT

Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Chairman/Mayor adjourned the meeting to Closed Session at 9:20 p.m.

RECONVENE

Chairman/Mayor reconvened the meeting at 9:38 p.m.

ADJOURNMENT

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 9:40 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY AGENCY SECRETARY/DEPUTY CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: JULY 6, 2005

FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT-PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FY 2005-06 ASSESSMENT INCREASES PURSUANT TO PROP 218

RECOMMENDED ACTION(S):

- 1) Open and Close the Public Hearing
- 2) Adopt resolutions:
 - a) Declaring the results of the ballot proceedings for each sub area, and
 - b) Ordering the levy of assessments & approving the amended Engineer's Report

EXECUTIVE SUMMARY: On May 4, 2005 Council Approved resolutions setting Public Hearing dates of June 15 and July 6, 2005 for the Fox Hollow Murphy Springs Landscape and Lighting Assessment District, Initiating a Proposition 218 ballot Proceeding and the levy of assessments for the District, and approving the Preliminary Engineer's report.

Since the May 4, 2005 meeting the following activities occurred to meet or exceed the requirements of the Landscape and Lighting Act of 1972 and in accordance with Proposition 218:

- Notices and ballots sent to 706 out of 755 property owners whose annual assessment rate is proposed to increase in 2005-06. See attached summary information
- Community meetings held (June 2, 7, and 13) with property owners to answer questions and provide information relative to the proposed increases.
- Council conducted the "Be Heard" public meeting on June 15, 2005.

Two Public Hearings and a Public meeting are required by a Proposition 218 balloting process. Tonight's Public Hearing provides all property owners a third opportunity to address Council regarding the proposed assessment rate increases. All ballots are due by tonight's meeting and will be tabulated after the Public Hearing.

The attached final engineer's report is required to set the annual assessments in the District. By resolution Council can approve the Final Engineer's report to be amended at a later date based tonight's ballot proceedings results.

The Resolutions attached will accomplish the following: 1) Declare the results of the ballot proceedings for each sub area where there is not a majority protest 2) Order the levy of assessments and approve the amended Engineer's Report consistent with tonight's ballot proceedings

By separate motion, the Council may need to direct staff to prepare, for a subsequent meeting, a resolution declaring the results of the assessment balloting and ordering the abandonment of the proceedings to increase assessments for each sub area where a majority protest is filed.

FISCAL IMPACT: The cost for preparation of this staff report and the engineer's report will be paid for by the Assessment District. The District will generate between \$137,413 and \$163,105 in gross revenues for the Fiscal Year 2004-05 depending on the outcome of tonight's ballot proceedings.

Agenda Item #15

Prepared By:

**Deputy Director Public
Works/Operations**

Approved By:

Public Works Director

Submitted By:

City Manager

STAFF REPORT ATTACHMENT a) 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, FOX HOLLOW/MURPHY SPRINGS SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Fox Hollow/Murphy Springs Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

☞ CERTIFICATION ☞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 2

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, SUNNYSIDE/STONEGATE SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Sunnyside/Stonegate Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 3

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, JACKSON MEADOWS NUMBER 7 SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Jackson Meadows Number 7 Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 4

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, LLAGAS CREEK SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Llagas Creek Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 5

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, SPARHAWK SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the “City Council”) does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Sparhawk Sub Area (hereafter referred to as the “District”) pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 6

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, CONTE GARDENS SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Conte Gardens Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 7

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, MILL CREEK SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Mill Creek Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 8

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, JACKSON MEADOWS 6A/6B SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Jackson Meadows 6A/6B Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 9

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, DIANA ESTATES SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Diana Estates Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 10

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, STONE CREEK SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Stone Creek Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 11

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, HAMILTON SQUARE SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Hamilton Square Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛️ CERTIFICATION 🏛️

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 12

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, OAK CREEK I, II, III SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Oak Creek I, II, III Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🔑 CERTIFICATION 🔑

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 13

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, ROSE HAVEN SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Rose Haven Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 14

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, PARSONS CORNER SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Parsons Corner Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 15

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, LA GRANDE ESTATES SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, La Grande Estates Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🏛 CERTIFICATION 🏛

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT a) 16

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, DECLARING THE RESULTS OF AN ASSESSMENT BALLOT PROCEEDING AND APPROVING CERTAIN ACTIONS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, SANDALWOOD SUB AREA, FISCAL YEAR 2005/2006

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council called and duly held an assessment ballot proceeding for the Fox Hollow/Murphy Springs Landscape Assessment District, Sandalwood Sub Area (hereafter referred to as the "District") pursuant to Resolution No. 5905 for the purpose of presenting to the qualified property owners within the District a proposition for the increased assessments and an assessment range formula to allow for reasonable future increases; and,

WHEREAS, The landowners of record within the District as of the close of the Public Hearing held on July 6, 2005 consented to the assessments and the assessment range formula to allow for reasonable increases; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 The above recitals are true and correct.

Section 2 The canvass of the ballots cast in the District at the assessment ballot proceeding held in the District on July 6, 2005, is hereby approved and confirmed.

Section 3 The proposition, presented to qualified property owners of the District for receipt by the City Clerk on July 6, 2005, each has received a ballot, weighted according to the proportional financial obligation of the affected property. Of the qualified property owners casting ballots at said assessment ballot proceeding, the proposition has carried. The City Council is hereby authorized to take the necessary steps to levy the assessment as authorized by the proposition.

Section 4 The City Clerk is hereby directed to enter this Resolution on the minutes of the City Council which shall constitute the official declaration of the result of such assessment ballot proceeding.

Section 5 This Resolution shall become effective immediately upon its adoption.

Section 6 The City Clerk shall certify the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

STAFF REPORT ATTACHMENT b)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA, ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE FOX HOLLOW/MURPHY SPRINGS LANDSCAPE ASSESSMENT DISTRICT, FISCAL YEAR 2005/06

The City Council of the City of Morgan Hill (hereafter referred to as the "City Council") does resolve as follows:

WHEREAS, the City Council has, by previous Resolutions initiated proceedings, and approved the Final Annual Engineer's Report (hereafter referred to as the "Report") as presented or amended which described the assessments against parcels of land within the Fox Hollow/Murphy Springs Landscape Assessment District for the Fiscal Year commencing July 1, 2005 and ending June 30, 2006; pursuant to the provisions of the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (hereafter referred to as the "Act") to pay the costs and expenses of operating, maintaining and servicing the improvements located within the District; and,

WHEREAS, The Engineer selected by the City Council has prepared and filed with the City Clerk, and the City Clerk has presented to the City Council, a Report in connection with the proposed levy and collection upon eligible parcels of land within the District, and the City Council did by previous Resolution approve such Report; and,

WHEREAS, the City Council desires to levy and collect assessments against parcels of land within the District for the Fiscal Year commencing July 1, 2005 and ending June 30, 2006, to pay the costs and expenses of operating, maintaining and servicing the improvements within the District; and,

WHEREAS, the assessments are in compliance with all laws pertaining to the levy of the landscape assessment district assessments, and the assessments are levied without regard to property valuation, and the assessments are **in compliance with the provisions of Prop 218**; and,

WHEREAS, the assessment levies are not based upon the assessed value of the property within the District, but are based upon the special benefit received by the parcels within the District from the improvements; and,

NOW, THEREFORE BE IT RESOLVED, DETERMINED, AND ORDERED BY THE CITY COUNCIL FOR THE DISTRICT, AS FOLLOWS:

Section 1 Following notice duly given, the City Council has held a full and fair Public Hearing regarding the results of the assessment ballot proceedings and amending and/or approving the Report prepared in connection therewith; the levy and collection of assessments, and

considered all oral and written statements, protests and communications made or filed by interested persons.

Section 2 Based upon its review (and amendments, as applicable) of the Final Annual Engineer's Report, a copy of which has been presented to the City Council and which has been filed with the City Clerk, the City Council hereby finds and determines that:

- i) the land within the District will receive special benefit by the operation, maintenance, and servicing of landscaping and appurtenant facilities within the boundaries of the District.
- ii) The District includes all of the lands receiving such special benefit.
- iii) the net amount to be assessed upon the lands within the District in accordance with the costs for the Fiscal Year commencing July 1, 2005 and ending June 30, 2006 is apportioned by a formula and method which fairly distributes the net amount among all eligible parcels in proportion to the estimated special benefit to be received by each parcel from the improvements and services.

Section 3 The Report and assessment as presented to the City Council and on file in the office of the City Clerk are hereby confirmed as filed.

Section 4 The City Council hereby orders the proposed improvements to be made, which improvements are briefly described as follows: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Services provided include all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous and satisfactory condition.

Section 5 The maintenance, operation and servicing of the landscaping and appurtenant facilities shall be performed pursuant to the Act and the County Auditor of the County of Santa Clara shall enter on the County Assessment Roll opposite each parcel of land the amount of levy, and such levies shall be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the levy shall be paid to the City Treasurer.

Section 6 The City Treasurer shall deposit all money representing assessments collected by the County of Santa Clara for the District to the credit of a fund for the Fox Hollow/Murphy Springs Landscape Assessment District, and such money shall be expended only for the maintenance, operation and servicing of the landscaping and appurtenant facilities as described in Section 4.

Section 7 The adoption of this Resolution constitutes the District levy for the Fiscal Year commencing July 1, 2005 and ending June 30, 2006.

Section 8 The City Clerk is hereby authorized and directed to file the levy with the County Auditor upon adoption of this Resolution.

Section 9 A certified copy of the levy shall be filed in the office of the City Clerk and open for public inspection.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

🍷 CERTIFICATION 🍷

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. ____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 6, 2005*

APPLICATION ZA-05-04: TEXT AMENDMENT - RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) STANDARDS AND CRITERIA

RECOMMENDED ACTION(S):

1. Open/Close the Public Hearing
2. Waive the first and second reading of the Ordinance
3. Introduce Ordinance (roll call vote)

EXECUTIVE SUMMARY: Section 18.78.188(C) of the Residential Development Control System (RDCS) Ordinance requires the Planning Commission to review the standards and criteria following each competition, and to decide whether any changes or amendments are necessary for the next competition. A Subcommittee of the Planning Commission was appointed to evaluate the proposed changes. Recommendations of the Subcommittee were considered by the full Planning Commission at their May 24, 2005 meeting. The proposed amendments were also discussed at a joint Planning Commission and City Council workshop held on June 8, 2005.

At the June 8 workshop, it was the consensus of the City Council that the RDCS Ordinance be amended to exempt Downtown projects from providing BMR units. In lieu of the BMR commitment, the Planning Commission recommends that Downtown Area projects receive 8 points under the Housing Needs category for providing 100 percent of the units affordable at less than moderate income or 10 points where 75 percent of the units are affordable to less than moderate income and 25 percent of the units are affordable to less than median income. The units would not be subject to a deed restriction or any requirement of the BMR program.

Another change that was agreed to at the June 8 workshop was to allow up to 25 percent market rate units in an affordable project. For the upcoming affordable competition, the Commission recommends Housing Element policy be interpreted to acknowledge the expectation that at least 20-25 percent of the units allocated under the Downtown Area and Vertical Mixed Use competitions will in fact serve median income (and below) households, due to the smaller size and higher density of housing type. Given the relative affordability of these Downtown/Mixed Use units, which are awarded from the "market rate/open market" allocations, General Plan consistency can be achieved without amending current General Plan policy. In the long term, the Commission recommends the Housing Element policies be amended to specifically address the integration market rate and affordable housing units. The attached Planning Commission memorandum provides additional information on this item.

The Planning Commission reviewed the final text amendments at their June 28, 2005 meeting and voted 4-1-1 to recommend approval of the Ordinance changes. Commissioner Lyle voted no. Mr. Lyle did not agree with the recommendation to exclude BMR units and felt that the scoring changes to benefit Downtown projects went too far. Staff supports the proposed amendments as recommended.

FISCAL IMPACT: No budget adjustment required.

Agenda Item # 16

Prepared By:

Planning Manager

Approved By:

**Community
Development Director**

Submitted By:

City Manager

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING ARTICLES II AND III,
THE STANDARDS AND CRITERIA AND PROCEDURES
OF THE RESIDENTIAL DEVELOPMENT CONTROL
SYSTEM AS SET FORTH IN CHAPTER 18.78 OF THE
MORGAN HILL MUNICIPAL CODE.**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN:**

SECTION 1. The Residential Development Control System (RCDS) is codified at Chapter 18.78 of the Municipal Code. Measure C, approved by the voters on March 2, 2004, and adopted under Ordinance No. 1665, requires the City Council to amend Article II of Chapter 18.78 of the Municipal Code, the “Specific Policies” as necessary to conform to all provisions of this initiative. In accordance with Measure C and other changes as recommended by the Planning Commission, the City Council hereby updates and amends the provisions of Article II and Article III of Chapter 18.78, and accordingly adopts the Code amendments set forth in the attached Exhibit “A.”

Changes from the text of the Morgan Hill Municipal Code amending Articles II and III are shown by strike-out text for deletions, and bold italic text for additions.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. Effective Date; Publication. This Ordinance shall take effect from and after thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Morgan Hill held on the 6th Day of July 2005, and was finally adopted at a regular meeting of said Council on the Day of July 2005, and said ordinance was duly passed and adopted in accordance with law by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

ATTEST:

APPROVED:

Irma Torrez, City Clerk

Dennis Kennedy, Mayor

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. , New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the Day of July 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE:_____

IRMA TORREZ, City Clerk

Exhibit “A”

Article II. Specific Policies

18.78.180. A Summary of Standards and Criteria

Residential Development Control System (RDSCS) **Summary of Standards and Criteria**

Part 2 Specific Standards and Criteria

18.78.210	Schools	Maximum Awarded:	25
			<u>Points</u>
			<u>Available</u>
	1. Developer fees		16
	2. Safe walking routes		6
	3. Off-site pedestrian safety improvements		4
18.78.220	4. Community Room for after school programs		<u>2</u>
		28	
	Open Space	Maximum Awarded:	20
			<u>Points</u>
			<u>Available</u>
	1.a Open space buffer		2
18.78.230	1.b Common useable open space		3
	1.c Convenient access to parks		1
	1.d Accessibility to parks/open space		1
	1.e Historical landmarks		2
	2. Ratio of buildings to open space		11
	3. Downtown open space amenity fee		6
18.78.240	4. TDC's		<u>6</u>
			32
	Orderly and Contiguous	Maximum Awarded:	20
			<u>Points</u>
			<u>Available</u>
	1. Near central core		8
18.78.250	2. Fills in existing utilities		6
	3. Adjacent to existing development		5
	4. Subsequent phase of development		2
	5. Quality of project master plan		<u>1</u>
			22
	Public Facilities	Maximum Awarded:	10
18.78.260			<u>Points</u>
			<u>Available</u>
	1. Micro or small vertical mixed use		3
	2.a Grids water mains to existing system		2
	2.b Design consistent with City storm drain system		1

2.c Location of storm drain lines	2
2.d Design of on-site detention/retention pond	2
2.e Contribution to local drainage fund	1
2.f Provides public improvements	4
2.g Contribution to public facilities fund	<u>1</u>
	16

18.78.250	Parks and Paths	Maximum Awarded:	10
------------------	------------------------	-------------------------	-----------

	<u>Points</u>
	<u>Available</u>
1. In lieu fee – small project	4
2. Amenities	4
3. Bike paths/equestrian trails	1
4. Downtown area	3
5. Neighborhood park	2
6. Additional park fees: double	3
7. Additional park fees: triple	6
8. Exceed dedicated land requirement	<u>4</u>
	27

18.78.260	Housing Needs	Maximum Awarded:	15
------------------	----------------------	-------------------------	-----------

	<u>Points</u>
	<u>Available</u>
2. 10% moderate rate units	2
3. Housing mitigation fee	6
4.a Affordable units for sale	13
4.b Downtown Area Project	10
5. Minimum 10% BMR in joint venture with non-profit agency	13
6. Double standard housing mitigation fee	<u>6</u>
	50

18.78.270	Housing Types	Maximum Awarded:	15
------------------	----------------------	-------------------------	-----------

	<u>Points</u>
	<u>Available</u>
1. Diversity of types and categories	7
2. Economic diversity	4
3. Variation of sizes	<u>4</u>
	15

18.78.280	Quality of Construction	Maximum Awarded:	15
------------------	--------------------------------	-------------------------	-----------

	<u>Points</u>
	<u>Available</u>
1. Exterior design	1
2a. Conservation of resources	
a. Energy Star windows	2
b. Two zone heating	2
c. Efficient A/C	1
d. Efficient gas furnace	1
e. Use of alternative energy	2
f. Certified HVAC and ductwork	1

2.b Water conservation	1
3.a Cast iron drain pipe	1
3.b Construction techniques exceed code	1
4. Architectural variation and differentiation	
a. Porches and balconies	2
b. Roof lines	1
c. Profiles and massing	1
d. Relief and details	<u>2</u>
	19

18.78.290	Lot Layout and Orientation	Maximum Awarded:	15
		<u>Points</u>	
		<u>Available</u>	
	1. Good site design and layout		
	a. Avoids deep or narrow lots	1	
	b. Separation of buildings	1	
	c. Avoids sharp angled lots	1	
	d. Driveways <150 ft. long	1	
	e. Transition of lot sizes	1	
	f. Overall excellence of project and minimum number of changes	2	
	2. Street design		
	a. Location to parks and open space	1	
	b. Visibility of entrances	1	
	3. Variety of setbacks		
	a. Between units – front	1	
	b. Between units – rear	1	
	c. Variation of lot widths	1	
	d. Garage placement	2	
	4. Measures to reduce noise	2	
	5. Downtown area – 3 rd story setback	1	
	6. Downtown area – variation of façade	1	
	7. Downtown area – shared parking	<u>1</u>	
		19	

18.78.300	Circulation Efficiency	Maximum Awarded:	15
		<u>Points</u>	
		<u>Available</u>	
	1a. Discourage fast traffic	1	
	1.b Future street extensions	2	
	1.c Future drive aisles/ parking lots	1	
	1.d Looping pattern of circulation	1	
	1.e eliminate existing stubs	2	
	1.f Avoids short blocks	1	
	1.g Minimum 20ft. clear view backout distance	1	
	1.h Multiple access streets	1	
	1.i Landscaped islands and entry monument	1	
	1.j Facilitates emergency response	1	
	1.k Provides public parking in downtown area	2	
	2.a Internal circulation for local residents	1	
	2.b Avoids undesirable future traffic situations	1	
	3. Dedication or improvement to existing streets and parking lots outside of project	2	

4. R3 Project: minimizes conflicting backout movements	1
5. R3 Project: Amenities not near parking or circulation aisles	1
6. Downtown area projects	
a. Mid-block pedestrian connections	1
b. Entries oriented to public streets	1
c. Closes gaps in pedestrian and bike network	1
d. Provides bike racks	<u>1</u>
	24

18.78.310	Safety and Security	Maximum Awarded:	10
------------------	----------------------------	-------------------------	-----------

	<u>Points Available</u>
1.a Provide fire escape ladder and fire extinguishers	0.5
1.b Provide first aid kit	0.5
1.c Other non-code fire protection device	0.5
1.d Provide outdoor lighting	0.5
1.e Illuminated address numbers and curb numbers	1
1.f Other intrusion protection device or approved construction technique	0.5
2. Non-combustible siding materials	2
3. Monitored alarm system	3
4. Fire sprinkler system	3
5. Neighborhood emergency preparedness Program through HOA	1
6. Carbon monoxide detection device	1
7. Neighborhood "Watch Program" in CC&R's	<u>1</u>
	14.5

18.78.320	Landscaping, Screening & Color	Maximum Awarded:	10
------------------	---	-------------------------	-----------

	<u>Points Available</u>
1.a 24" box-size trees within project	1
1.b Shading & screening of group parking areas	1
1.c Varied front yard landscaping	1
1.d Energy saving trees on south walls	1
1.e 24" trees for streets	1
1.f Adheres to Street Tree Master Plan	1
2.a Drought tolerant grasses	0.5
2.b Automatic irrigation systems	0.5
2.c Pleasing hardscape coverage	0.5
2.d Use of water conserving plants	0.5
2.e Separate water source for irrigation of common area	2
2.f Small & Micro projects: Separate water supply for common area irrigation	1
3. Visible landscaping to public	1
4. Minimize drainage runoff	2
5. Downtown Area: Use of building color	<u>1</u>
	15

18.78.330	Natural and Environmental	Maximum Awarded:	10
		<u>Points</u>	
		<u>Available</u>	
1.a Minimize grading		1	
1.b Restricts runoff		1	
1.c Preserves trees		1	
1.d Preserves natural setting		1	
1.e Improves natural conditions on adjacent sites		2	
2.a Provides privacy for residents		1	
2.b Protects existing open space		2	
2.c Minimizes use of sound walls		2	
3. Reduces construction waste		1	
4. Solar power generation		1	
5. Incorporates Green Building Design concepts		<u>2</u>	
		15	

18.78.340	Livable Communities	Maximum Awarded:	10
		<u>Points</u>	
		<u>Available</u>	
1. Planning Commission excellence		2	
2. Low maintenance walkways and bike paths		1	
3. Encourages use of public transportation		1	
4. Nearness to public transportation		2	
5. Sidewalk improvements		1	
6. Walking distances to stores, schools, employment		1	
7. Vertical mixed use project		2	
8. Builds to planned densities		3	
9. In-fill projects		<u>2</u>	
		15	

18.78.180.B Background.

A. The residential development control system was adopted in response to the need to establish a growth rate in Morgan Hill that is conducive to orderly and controlled residential development. The success of any growth-management system depends upon how well it addresses and exemplifies the goals of the general plan, as well as other adopted city ordinances and documents. Any requirements made by this system shall use existing city plans and policies, as well as exploring innovative means to facilitate its implementation.

B. The residential development control system is a competitive qualifying process intended only to compare projects and allow the highest scoring projects to proceed on in the development process. Developers and city staff should not construe it as a design review or an absolute approval with any entitlement other than the right to file a tentative map or development plan. Changes to the project (1) are encouraged to improve its quality; and (2) may be required for formal project approval.

C. Concerns have been expressed about the Morgan Hill Unified School District (MHUSD) impaction situation and the fact that the rural character associated with the city is

being lost to urban development that is outstripping the city's ability to provide adequate services and facilities. Also, a disproportionate amount of moderate to expensive single-family homes have been built, as opposed to a balance of housing types at prices to meet the needs of all the segments of the population, including those of low or fixed incomes. It is intended that a response to these concerns will be accomplished in a practicable manner through implementation of the residential development control system, which will concurrently address the preservation of open space and the natural environment. (Ord. 1034 N.S. § 1 (part), 1991)

18.78.182 Rate of growth.

The method by which controlled growth will be accomplished involves building approximately two hundred fifty* new dwelling units annually in order to reach a population not to exceed forty eight thousand people by the year 2020.

* The number of building allotments authorized under the RDCS may be less than two hundred fifty units per year because of other housing which would be exempt from the RDCS (construction of single dwellings, etc.) (Ord. 1034 N.S. § 1 (part), 1991)

18.78.184 Procedures.

A. ~~In~~ **No later than** May of each year preceding an allotment evaluation, the planning officer and planning commission will provide recommendations to the city council regarding the total number and distribution of building allotments. The city council will establish the total number of housing units to be awarded and the number of units to be allotted for each type of housing.

B. The planning officer will inform interested developers of the total number of units available and the various types of housing units that will be approved. The planning officer will hold a pre-competition meeting with all persons interested in submitting an application. The planning officer will explain the allotment process and distribute applications. At this meeting developers will be encouraged to indicate the proposed project location, the number of units, and the type of housing. This information will assist the city and developers in providing better competition for the various types of housing units to be built under the RDCS process.

C. In an attempt to further increase the quality of project design, a voluntary preliminary review process shall be implemented. This review process shall have staff priority in the months of June, July, and August whereby responses to these submittals shall be received within four weeks from the date of filing. These responses shall include, but not be limited to, the following: (1) Section A evaluation; (2) Section B evaluation, (3) any recommendations for project improvement; (4) any public health, safety and welfare issues; (5) any need for any

additional information, plans or studies. (Ord. 1179 N.S. § 1, 1994; Ord. 1034 N.S. § 1 (part), 1991)

18.78.186 Overview.

A. The first section (Section 18.78.200) is concerned with the general ability of the city to provide major public facilities and services to new residential projects without creating additional impact. This section is weighted heavily, meaning that a proposed project must obtain the minimum required points (~~nine~~ ***seven and a half*** points) and receive minimum passing scores under certain categories in order to proceed to the next step of the evaluation.

B. The next step, (Section 18.78.210) reflects the quality of the project design and the extent to which it contributes to the welfare of the community. The intent of these criteria is to encourage competition and to promote additional effort which creates innovative designs that satisfy user needs. The standards and criteria in Part 2 of this article are guidelines, and it is important to note that a developer is not precluded from improving upon or augmenting these guidelines, upon approval of the planning officer. Criteria for each category in Part 2 of this article are, therefore, more subjective and, thus, merely points out those items which the developer should consider to maximize his rating.

C. After successful completion of both Parts 1 and 2, the projects which have received at least ~~nine~~ ***seven and a half*** points in Part 1 and have been given the most points in Part 2 (one hundred ~~twenty-five~~ ***sixty*** points and over, ***except micro and 100% affordable projects, for which the total score is 150 points and over***) with minimum passing scores in certain categories will then be eligible for allotments and subsequent building permits, subject to Section 18.78.120. Those that may not receive any allotment this year will have an opportunity to improve their designs and reapply during the next competition.

D. The procedure for allotting development allotments has been incorporated into this system. The development allotment evaluation encourages all developers to locate and design the best project possible by following standards and criteria for both Sections 18.78.200 and 18.78.210. (Ord. 1034 N.S. § 1 (part), 1991)

18.78.188 Additional information.

A. Project Size. Council priority is to give priority to partially completed projects. This policy will allow continuity to the allotment process. The portion of the uncompleted project competing in a competition should be equal to or superior in quality to the original project receiving an allocation. Project applications for over one hundred fifty units will be considered based on benefits to the community.

B. Public Notices. The council policy of notifying neighboring properties within three hundred feet of proposed projects is expanded to give a greater number of people notice by means of the utility bill inserts and notice on cable TV.

C. Review of Standards and Criteria. The planning commission shall review the standards and criteria ~~each March~~, following an RDCS competition, to determine whether any changes or amendments are necessary for the next competition. ~~to begin each new allotment year, within sixty days after the awarding of allotments.~~ (Ord. 1034 N.S. § 1 (part), 1991)

18.78.190 Evaluation--Standards and criteria.

A. As provided for in Section 18.78.100 A, the planning officer shall review each application and determine whether or not the proposed development conforms to the City's General Plan. In addition, the planning officer shall review each application for conformance with the following: City street, parking and site development standards as set forth in Chapter 17.34 and Title 18 of the Morgan Hill Municipal Code. If the PO determines that a proposed development does not conform to the city codes as cited above, the application shall be rejected. Notice of such rejection shall be given pursuant to Section 18.78.100 A.

B. Within fifteen days after such notice is mailed, the applicant may appeal the decision of the PO to the city council as provided in Section 18.78.100 B. In considering an appeal the city council shall either affirm the decision of the PO to reject the application on the basis of nonconformity with the plans (General Plan and City Codes), or reverse the decision by finding that the proposed development is in conformity with the plans, or permit the applicant to modify his proposed development to bring it into conformity with the plans.

C. Proposed developments found by the PO or city council to conform to the General Plan shall be evaluated by the PO and awarded points as hereinafter set forth. The planning commission shall establish a specific set of standards and criteria to direct the PO in assigning points under each category in Parts 1 and 2 of this article. The PO shall submit his evaluation to the planning commission and the commission shall approve, disapprove or modify the PO's evaluation by simple majority vote. (Ord. 1179 N.S. § 2, 1994; Ord. 1034 N.S. § 1 (part), 1991)

Part 1. Point System

18.78.200 Rating system for proposed developments.

Each proposed development shall be examined for its relation to and impact upon local public facilities and services. The appropriate city department or outside public agencies shall provide recommendations to the PO, and the PO shall rate each development by assigning from zero to two points for each of the following:

A. 1. The ability and capacity of the water system to provide for the needs of the proposed development without system extensions beyond those which the developer will consent to provide.” (Comments of the director of public works.)

2. Each subdivision application shall be reviewed by the director of public works for determination of the ability and capacity of the water system to provide for the needs of the proposed development.

2 Points. The existing water system and improvements that upgrade water service and fire protection in the general neighborhood such as gridding, well, or booster pump, are provided as determined by the director of public works.

1 or 1.5 Points. The existing water system has adequate capacity to serve the development and improvements would tie into existing water mains without gridding or otherwise providing upgrades to the existing water system.

0 Points. The existing water system and improvements necessary for water service or fire protection will tax the existing system beyond the city's ability to provide adequate service.

B. 1. "The ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste of the proposed development without system extensions beyond those which the developer will consent to provide." (Comments from the director of public works.)

2. Each subdivision application shall be reviewed by the director of public works for determination of the ability and capacity of the sanitary sewer distribution and treatment plant facilities to dispose of the waste generated by the proposed development.

2 Points. Existing sewer lines and treatment plant have sufficient capacity to serve the project.

1 or 1.5 Points. Extension of existing sewer lines directly from the project, and the sanitary waste generated by the project which taxes the existing line capacity is mitigated as determined by the director of public works, and there is sufficient capacity in the treatment plant.

0 Points. The proposed development would adversely impact the existing line capacity or treatment plant, or the existing line capacity is insufficient to handle the waste generated by the proposed project (or in any way fails to meet the standards for one or two points).

C. 1. "The ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development without system extensions beyond those which the developer will consent to provide." (Comments from the Santa Clara Valley Water District and the director of public works.)

2. Each subdivision application shall be reviewed by the director of public works and Santa Clara Valley Water District for determination of the ability and capacity of the drainage facilities to adequately dispose of the surface runoff of the proposed development.

2 Points. Local drainage generated by the project is capable of draining into existing storm drainage facility, or a permanent public improvement to carry the runoff into a receiving drainage way which has sufficient capacity is provided.

1 or 1.5 Points. Local drainage generated by the project is mitigated by use of private on-site detention with higher value given for permanence, quality and guaranteed maintenance.

0 Points. Local drainage generated by the project is not capable of draining into the existing permanent storm drainage facility (or in any way fails to meet the standard two points).

D. 1. "The ability of the city-designated fire department to provide fire protection according to the established response standards of the city without the necessity of establishing a new station or requiring addition of major equipment or personnel to an existing station, and the ability of the police department to provide adequate patrols for residential and traffic safety without the necessity of acquiring new equipment or personnel." (Comments from the fire and police departments.) (Ord. 1034 N.S. § 1 (part), 1991)

2. Each subdivision application shall be reviewed by the fire and police departments for the determination of the ability of the fire department to provide fire protection according to the established response standards and the ability of the police department to provide adequate patrols for residential and traffic safety. Proposed developments must be assigned a minimum of one point in this category to qualify under Part 1 of the evaluation.

1.5 Points. Fire protection response times are within the established response standards of the city from at least two fire stations.

1 Point. Fire protection response times are within the established response standards of the city from at least one fire station and no more than 15% in excess of the response time standard from a second station.

.5 Points. Fire protection response times are within the established response standards of the city from at least one fire station.

0 Points. The project cannot be served by the existing fire personnel without requiring additional stations, equipment or personnel (or in any way fails to meet the standard for a .5 point total above)

.5 Points. The project adjoins existing developed land with proper road access for maximum efficiency of police patrols.

NOTE: For scoring purposes, the city Fire Department or contract agency, shall publish on July 1 of each competition year, a map showing the area which can be serviced within the established fire response time standard from the California Division of Forestry facility located on Monterey Road at Watsonville Road.

E. 1. "The ability and capacity of major street linkage to provide for the needs of the proposed development without substantially altering the existing street system (the desired target traffic level being no worse than "D+" level of service as defined in the 1985 Transportation Research Board Report # 209), except as otherwise allowed in the General Plan, and the availability of other public facilities (such as parks, playgrounds, etc.) to meet the additional demands for vital public services without extension of services beyond those provided by the developer." (Comments from the appropriate department heads.)

2. Each subdivision application shall be reviewed by the director of public works and parks and recreation director for determination of the ability and capability of major street linkage to provide for needs of proposed development and of the availability of other public facilities, such as parks and playgrounds, to meet the additional demands. Proposed developments must be assigned a minimum of one point in this category to qualify under Part 1 of the evaluation.

2 Points. The project can be served by the existing parks and street systems, and the completion of the project will not overload any local, collector or arterial street in the immediate area.

1 or 1.5 Points. The project can be served by the existing parks and street systems as defined above, and if there are public off-site improvements, they are relatively minor and the project will not contribute to the need for major street improvements.

0 Points. Compliance to Chapter 17.28 of this code. The project cannot be served by the existing street system, and will contribute to the need for major off-site public improvements (or in any way fails to meet the standard for one or two points).

NOTE: Development may be evaluated on an individual basis on its ability to provide private recreational service for its residents that complement city services, i.e., trails, private open space, association facilities, etc. All proposed trails, private open space and associated facilities should be permanently secured with appropriate documentation at the time of development. (i.e., deeds, easements, C.C.& Rs., dedication, homeowners associations, etc.). Land that is set aside for the above mentioned items as a nonpermanent use, could dedicate all future development rights to the city. This procedure is to allow neighborhood control over land that may not be needed in the future (i.e., storm water retention areas). (Ord 1323 N.S. §§ 36 and 37, 1997; Ord. 1228 N.S. § 1, 1995; Ord. 1179 N.S. §§ 3 & 4, 1994; Ord. 1034 N.S. § 1 (part), 1991)

Part 2. Specific Standards and Criteria

18.78.210 Schools.

A. "The provision of school facilities and amenities as attested by agreement with the Morgan Hill Unified School District (MHUSD) to the extent such consideration is not in conflict with state law.

..... (25 points)"

B. Standard and Criteria:

1. ~~Seventeen~~ **Sixteen points** will be awarded for the payment of the district-adopted developer fees as provided by the Leroy F. Greene School Facilities Act of 1998. Full market value credit will be applied to a direct payment to the School District, for donated land, construction, or other services provided by a developer or project property owner that relate to provision of school facilities.

2. Up to **six** additional **points** may be awarded to a project where:

At the time of application submittal or applicant commits as part of the first year of the first phase of the current application, a safe walking route exists or will be provided between the project site and existing or planned MHUSD schools. A safe route is defined as continuous sidewalks and/or paved pedestrian pathways, cross walks and caution signals at designated street intersections between the project and a school site.

The distance to a school is measured as the lineal distance a student would walk, from the average center point of housing in a project to the nearest entrance point of the nearest school grounds.

a. The project is within 3/4 of a mile of a school serving grades K through 3 and:

i. The students are not required to cross railroad tracks, or a street that currently functions (based on peak hour level of service as determined by the Public Works Department) as a collector or arterial. **(half point)**

ii. The students are not required to cross railroad tracks, or a street that is designated within the General Plan as a collector or arterial. **(half point)**

b. The project is within 3/4 of a mile of a school serving grades 4 through 6 and:

i. The students are not required to cross railroad tracks, or a street that currently functions (based on peak hour level of service as determined by the Public Works Department) as an arterial. **(half point)**

ii. The students are not required to cross railroad tracks, or a street that is designated within the General Plan as an arterial. **(one point)**

c. The project is within 1.5 miles of a middle/intermediate school and :

i. The students are not required to cross railroad tracks, or a street that currently functions (based on peak hour level of service as determined by the Public Works Department) as an arterial unless the most direct street crossing can occur at a signalized intersection. **(half point)**

ii. The students are not required to cross railroad tracks, or a street that is designated within the General Plan as an arterial unless the most direct street crossing can occur at a signalized intersection. **(one point)**

d. The project is within 1.5 miles of a ***Live Oak or Sobrato*** high school. **(two points)**

e. Proposed development will be for senior citizens as defined in Section 51.2 of the State Civil Code. **(six points)**

NOTE: For scoring purposes, the anticipated attendance area for an existing or planned school shall be as determined by the Board of Education and published by the School District as of September ~~30~~ **15** of the fiscal year for each competition. A planned school is defined as a site designated by the School Board for a future school prior to September 30 of the fiscal year the competition is held. Scoring for a multi-year/phased development includes recognition of all pedestrian safety or traffic improvements provided in the initial or previous phases of the development.

3. Up to **four additional points** may be awarded to a project which:

a. Provides off-site pedestrian safety improvements or traffic safety improvements near a MHUSD school. Any proposed pedestrian and traffic safety improvements cannot be redundant of improvements committed to in other categories. The cost of the improvements must be valued at \$ 1100 per point per unit. The pedestrian improvements and traffic safety improvements must be made to an elementary school within 3/4 of a mile (straight line distance) of the edge of project site or the same improvements can be made to a middle or high school within the City's Urban Service Area. **(up to three points)**

Note: The public improvements offered under the above section must be separate from the public improvements offered under Section B.1.f of the Public Facilities Category, Section B.3.a ~~through~~ of the Circulation Efficiency Category or B.5 of the Livable Communities Category.

For safe walking route improvements, applicants must also provide a letter from each intervening property owner stating agreement to dedicate the required street right-of-way for the sidewalk or pathway improvements between

the project site and the designated school. Improvements to establish a safe walking route must be completed prior to completion of the 20th unit in the development or completion of the project, whichever occurs first.

- b. The project is located within a Community Facilities (Mello-Roos) District established by the Morgan Hill Unified School District to finance new school facilities. The proposed project phase(s) will only receive points in this category if their Mello-Roos payment exceeds by \$ 1100 or more per dwelling unit the Leroy F. Greene School Facilities Act (state-mandated) fees in effect on December 1st of the fiscal year of the competition. One point will be awarded for each \$ 1100 per dwelling unit the proposed project's average dwelling unit school fees costs exceeds the state-mandated per dwelling unit fees. **(up to three points)**
- 4. ***Provides an on-site community room that is specifically designed for and can be used for after school educational programs such as homework tutoring, music lessons, etc., and is available for use at no cost to the Morgan Hill Unified School District. (two points)***

NOTE: Full market value credit will be applied to a direct payment to the School District, for donated land, construction, or other services provided by a developer or project property owner that relate to provision of school facilities. (Ord. 1575 N.S. § 1, 2002; Ord. 1517 N.S. § 1, 2001; Ord. 1486 N.S. §§ 1 & 2, 2000; Ord. 1404 N.S. § 1, 1998; Ord. 1346 N.S. § 1, 1997; Ord. 1304 N.S. §§ 1 & 2, 1996; Ord. 1228 N.S. § 2, 1995; Ord. 1179 N.S. §§ 5 & 6, 1994; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.220 Open space.

A. "The provisions of public and/or private usable open space, and where applicable, greenbelts.
..... **(20 points)"**

1. The provisions of open space is desirable for the physical and mental well-being of the city residents, as well as preserving a rural atmosphere and invoking a positive reaction to the environment. These open spaces can then be used for both passive and active recreation for all age groups, while also preserving the environment for present and future generations to enjoy.

B. Standards and Criteria.

- 1. Open space areas are provided or maintained within the proposed development.

a. Provides open space buffer areas adjacent to freeway or arterial streets, measuring five feet in depth in excess of the zoning code requirements for **one point**, 10 feet in excess of the code for **two points**. **(up to two points)**;

b. Public or private common useable open space is encouraged where neighborhood homeowners associations or other acceptable private maintenance entity can be used to coordinate their use and maintenance **(three points)**;

c. Provides convenient access to public or private parks internal to the project where appropriate through the use of bicycle and pedestrian pathways. Bicycle and pedestrian pathways shall be located in areas no less than 20 ft. wide, with an average width of 30 ft. (for the entire length of the path). The pathway provided shall be paved or other suitable durable surface and a minimum of 7 ft. in width. The proposed pathway(s) cannot be redundant of public sidewalks. **(one point)**

d. Provides accessibility to existing or proposed public parks and open space areas outside the project boundary and encourages multiple uses and fee dedication of open space areas adjacent to flood control right of ways and recharge facilities. Points will only be awarded where the relevant public agency has provided written approval to allow access between the project and the aforementioned facilities. The access provided cannot be redundant of the public sidewalk. **(one point)**.

Note: Requires public agency ownership or agreement to accept dedication of the land by the public agency.

e. Historical sites and landmarks on or adjacent to the project site are maintained in as natural state as possible with limited supportive development such as parking facilities, fencing, signing, etc. **(up to two points)**

2. Provides a high ratio of total open space area. **(A maximum of eleven points will be assigned under *either subsection a or subsection b of this criteria*)**

<i>a.</i>	<u>Building Coverage (%)</u>	<u>Points</u>
	55 - < 60	1
	50 - < 55	2
	45 - < 50	3
	40 - < 45	4
	35 - < 40	5
	30 - < 35	6
	25 - < 30	7

20 -	< 25	8
15 -	< 20	9
10 -	< 15	10
0 -	< 10	11

b. Building coverage for vertical mixed use projects, projects in the CC-R district or projects zoned R-4 or similar high density zoning classification will be calculated as follows:

<u><i>Building Coverage (%)</i></u>	<u><i>Points</i></u>
<i>70 - <75</i>	<i>5</i>
<i>65 - <70</i>	<i>6</i>
<i>60 - <65</i>	<i>7</i>
<i>55 - < 60</i>	<i>8</i>
<i>< 55</i>	<i>9</i>

Building coverage is defined as that portion of the overall project master plan, exclusive of driveways and streets, which is covered by a building, parking lot or carport.

3. Downtown vertical mixed use projects will be awarded up to six points for a commitment to contribute toward a shared open space amenity such as a park or downtown plaza.

a. In addition to the points available under Subsection B.4 below, a vertical mixed use project will be awarded three points for payment of a downtown open space amenity fee. The amount of the fee shall be equal to the most recent adjusted open space fee (see Note 1 below). Eligible projects that elect to pay double the fee will be awarded six points.

3 4. There is a maximum of **6 points** available in this category.

a. The project will receive **three points** for a commitment to purchase transferable development credits (TDCs) from property owners with land of greater than twenty percent slope. (Based upon the cumulative project to date ratio of one TDC for every twenty-five dwelling units proposed.)

b. Projects of 24 units or less which do not provide a common area park or open space will receive **six points** for a commitment to purchase double TDC's.

c. Projects zoned R-2, R-3, or similar higher density classification will receive **six points** for a commitment to purchase double TDC's.

Note 1: In lieu of the TDC commitment, projects of 24 units or less, ***Downtown Area projects*** and affordable project developments will be awarded ~~four~~ **three points** for payment of an open space fee at the rate of ~~\$15,000~~ **\$36,880** per TDC, **or** Eligible projects that elect to pay double the open space fee will be awarded **six points**. The amount of the open space fee shall be based on the average cost per dwelling unit for an equivalent TDC commitment as specified above. The open space fee shall be adjusted annually in accordance with the annual percentage increase or decrease in the median price of a single-family detached home in Santa Clara County. The base year from which the annual percentage change is determined shall be January 1, ~~1996~~ **2005**. The base year may be adjusted by City Council Resolution prior to the filing deadline for each competition year.

Note 2: Projects containing both single and multi-family zoning will be granted a proportional share of points for commitments to a. & c. above. Points will be granted based on a percentage of units within the various zoning districts within the entire overall project. For example, a project of 50 percent R-2 and 50 percent R-1 would receive 50 percent of the 6 points available under 3c. and 50 percent of the 3 points available for the single-family TDC commitment under 3a. for a total of 4.5 points (rounding will occur to the nearest half point). (Ord. 1575 N.S. §§ 2 & 3, 2002; Ord. 1517 N.S. §§ 2 & 3, 2001; Ord. 1486 N.S. §§ 3 & 4, 2000; Ord. 1438 N.S. § 1, 1999; Ord. 1404 N.S. § 2, 1998; Ord. 1346 N.S. § 2, 1997; Ord. 1228 N.S. § 3, 1995; Ord. 1179 N.S. § 7, 1994; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.230 Orderly and contiguous development.

A. "The extent to which the proposed development accomplishes the orderly and continuous extension of existing development rather than "leapfrog" development, by using land contiguous to urban development within the city limits or near the central core and by the filling in on existing utility lines rather than extending utility collectors.

..... **(20 points)"**
For scoring purposes, "the central core" is the area illustrated on the Central Core Map, attached as Exhibit B and described generally as that area bounded on the west by Del Monte Avenue from Wright Avenue to Ciolino Avenue and by West Little Llagas Creek from Ciolino Avenue to Cosmo Avenue; on the east by the rail road tracks from the easterly prolongation of Wright Avenue to Main Avenue, by Butterfield Boulevard from Main Avenue to Dunne Avenue, and by Church Street from Dunne Avenue to the easterly prolongation of Cosmo Avenue; on the north by Wright Avenue and its easterly prolongation to Church Street.

2. A well planned community is one which provides for the needs of its residents. Convenience, economy, and service are aspects which an orderly and contiguous development pattern can help facilitate.

B. Standards and Criteria.

1. Develops lands near the central core of the city as defined by Exhibit “B” to Measure “C” approved by the voters on March 2, 2004. There is a benefit for development to be within the central core area. However, it is recognized that the city does not have a well defined central core. Therefore, greater emphasis is to be given to contiguous patterns of growth. Projects within the core area will receive eight points. Projects located outside the core area will receive from zero to seven points depending on their relationship to the core area as shown below:

- a. Within central core, eight points,
- b. Within six hundred feet of the central core area, 7.5 points;
- c. Within one thousand two hundred feet of the central core area, 7 points;
- d. Within one thousand eight hundred feet of the central core area, 6.5 points;
- e. Within two thousand four hundred feet of the central core area, 6 points;
- f. Within three thousand feet of the central core area, 5.5 points;
- g. Within three thousand six hundred feet of the central core area, 5 points;
- h. Within four thousand two hundred feet of the central core area, 4.5 points;
- i. Within four thousand eight hundred feet of the central core area, 4 points;
- j. Within five thousand four hundred feet of the central core area, 3.5 points;
- k. Within six thousand feet of the central core area, 3 points;
- l. Within six thousand six hundred feet of the central core area, 2.5 points;
- m. Within seven thousand two hundred feet of the central core area, 2 points;
- n. Within seven thousand eight hundred feet of the central core area, 1.5 points;
- o. Within eight thousand four hundred feet of the central core area, 1 point;
- p. Within nine thousand feet of the central core area, ½ point;
- q. More than nine thousand feet from central core area, zero points.

Note: If any portion of a project is within the central core, as defined by the PO, that project shall be considered within the central core area. The distance from the central core shall be measured using the minimum distance between any portion of a parcel and the central core boundary measured in a straight line.

2. Fills in existing utility lines (requires no off-site extensions) and provides a contiguous pattern of growth. If water is available at the site and the water main is of sufficient capacity and supply to serve the proposed project and future development, the project will receive **one point**. If sewer is available to the site and the sewer main has sufficient capacity to serve the proposed project and future development, the project will receive **two points**. If storm

drains are of sufficient capacity to serve the project and are available to the site, the project will receive **one point**. If the project is located within the established response time standard of one fire station, the project will receive **one point**. If the project is located within the established response time standard of two or more fire stations, the project will receive **one additional point**.

3. A proposed development located within the existing urban service area which provides for orderly growth and urban in-fill is preferable and helps prevent premature urbanization of agricultural land. Projects that provide for orderly growth patterns throughout residential neighborhoods and compatibility with adjacent and nearby land uses are preferable. Projects that are located adjacent to land that has been developed or approved for development shall be scored as follows:

- a. > 0 -- 20% Adjacent to existing development, **one point**
- b. >20 -- 40% Adjacent to existing development, **two points**
- c. >40 -- 60% Adjacent to existing development, **three points**
- d. >60 -- 80% Adjacent to existing development, **four points**
- e. >80 -- 100% Adjacent to existing development, **five points**

Adjacent development is defined as contiguous property located within MH's city limits, urban service area, or urban growth boundary (UGB) and which is developed to its ultimate potential according to the city's General Plan or zoning of the property, or at least substantially developed according to the General Plan or zoning. To be considered substantially developed, at least ninety-five percent of the contiguous land area must be committed or developed to its ultimate use. Contiguous property does not include streets, railroad rights-of-way, or parcels held in fee title by a public utility or public agency containing above or below ground utilities such as gas pipelines, electric power transmission lines, or major water distribution pipelines.

County lands dedicated as a public facility or encumbered with an open space easement, or contiguous property within MH's UGB committed to an ultimate land use such as a city park, developed school site, or private open space will also be considered as adjacent development. Open space lands which are owned in private must have a public open space easement recorded over the corresponding area. For scoring purposes, undeveloped property which by September 30th 15th of the fiscal year the competition is held has received either final map approval, or tentative map and development agreement approval for projects with previously completed phase(s), or for which building permits have been issued, shall be considered to be developed property. The perimeter established for the complete (master-planned) project will be used to determine adjacency for every RDCS submittal. Where previously allocated phases of the same project have been developed or have received final map approval and are immediately adjacent

to an otherwise undeveloped external boundary, that portion of the project's perimeter shall then be considered developed, provided the project is making satisfactory progress according to the approved development schedule (project is not in default).

The percentage of a property that is adjacent to development shall be that percentage of the combined length of the subject property lines which is determined to be contiguous to adjacent development as defined in this subsection. The subject property is defined as a single parcel or contiguous parcels of record on which the proposed project would be located and shall include that portion of the subject property designated for future development. A designated remainder parcel shall not be considered a portion of the subject property except where development on all or a portion of the remainder parcel is proposed as part of the current project application.

4. A proposed development which is a subsequent phase of a previously approved project that has been awarded allotments provides for the continuous extension of existing development.

a. A proposed development which is a subsequent or final phase of a previously allocated development and consists of ~~30~~ **40** dwelling units or less shall be awarded ~~two one~~ point. **(two one point)**

b. A continuing project will receive ~~one~~ **two** points if one half of the units allocated for the fiscal year the competition is held have been issued building permits ***and on site improvements for those units have been completed*** by September ~~30~~ **15**, AND all prior phases are under construction or completed (excluding customs). **(one two points)**

OR

If a proposed development is a continuing project and does not have any allocations for the FY the competition is held, the project will receive ~~one~~ **two** points if all previous phases (if any) are under construction.

Note: To qualify for any points under paragraph B4, the proposed development at total build-out, shall not exceed the number of units proposed in the original Development Application from which the project had been awarded an initial building allotment, unless approved by the Planning Commission prior to the competition's application submission deadline. The number of units requested for each subsequent fiscal year shall be no more than 25% above any single highest year allotment for the proposed project to a maximum of ~~30~~ **40** units. The 25% or ~~30~~ **40**-unit limit includes any units already allocated to the project in that fiscal year as a result of a prior fiscal year competition. For Subsection B4a and B4b above, ~~earlier phases of development must also be in compliance with the development schedule approved for the project except where the delay is due to extended city processing~~ ***all prior***

allotments must also have an approved development agreement and the project must be in compliance with said agreement.

5. Project Master Plan design is above average in terms of addressing internal street circulation and access requirements, appropriate transition of lot size and density within the development and with surrounding developments, and aggregation and use of common open space areas. **(minus one point, zero or one point)**

Note: Project Master Plan determined to be only satisfactory with respect to the above items will be awarded zero points. Project Master Plan determined to be of a poor design will receive minus one point under this criterion. A project will be awarded one point if no significant design flaws can be found, and the design gives strong consideration to the issues of circulation, access, density transitions, and the use of common open space. If a project master plan has two or more significant design flaws, it will be considered below average and one point will be taken away. A design flaw would be something that, at the subdivision stage, staff would ask to be modified or not recommend for Planning Commission approval. Significant design flaws would basically require the redesign of the master plan. For scoring purposes, that portion of an ongoing project awarded a building allotment prior to October 1, 1999, shall not be considered within the Project Master Plan design, except where the inclusion of the earlier allocated phase(s) would result in a higher overall score. (Ord. 1575 N.S. § 4, 2002; Ord. 1517 N.S. § 4, 2001; Ord. 1486 N.S. §§ 5 & 6, 2000; Ord. 1438 N.S. §§ 2 & 3, 1999)

18.78.240 Public facilities.

A. "The provision of needed public facilities such as critical linkages in the major street system, or other vital public facilities.

..... **(10 points)"**

2. The public facilities which serve the Morgan Hill area can benefit by discriminate development which improves the existing systems. Many areas exist where improvements to the systems are needed. A proposed project should help alleviate the problem rather than aggravate it.

B. Standards and Criteria. **(Maximum ten points)**

1. A micro, ***small vertical mixed use***, or affordable project will receive **(three points)** if it meets all standard requirements for design and construction of public facilities.

2. Installs public facilities of sufficient size to service the proposed development and future developments without the need to install supplemental facilities.

a. Grids water mains into the existing water system. **(two points)**

b. Drainage concept is consistent with the City's storm drain system. (e.g., the city's storm drain master plan, local area storm drain system). **(one point)**

c. Storm drain lines that are to be maintained by the city will be constructed entirely within the paved area of the street (curb to curb), or in a location acceptable to the Director of Public Works. **(one point)**

d. Storm drainage from the development is accommodated without the need for an on-site detention pond or open space retention areas, unless the on-site detention facility is appropriately located and sized so as to serve or coordinate with future area-wide or adjacent development. **(up to two points)**

Note 1. Applicants providing an oversized pond must supply information specifying how the pond sizing will address the area need and how other projects will be connected to the detention pond. The extra capacity provided must be stated in terms of the land area it can serve in acres and cubic feet. When the detention pond is not connected to other projects, the applicant must provide data satisfactory to the City's Public Works Department demonstrating the detention pond's benefit to other off-site projects. This shall be in the form of an agreement letter included the application submittal. Over sizing must equal 50 percent of the project drainage area or 10 acres, whichever is greater, to receive maximum points.

Note 2. Applicants who use a regional detention facility, a detention pond from another development, or a Santa Clara Valley Water District facility must supply an authorization/approval letter with their application.

e. Applicant will contribute \$ 1100 per unit to the Local Drainage Non-AB1600 fund for off-site storm drainage improvements, in addition to payment of standard fees. **YES __, or NO __** (Contingent commitments will not receive points) **(one point)**

f. Provides public facility *or pedestrian* improvements *from a city-approved list or improvements* on or adjacent to the project in excess of standard requirements, e.g., sewer, traffic control. *In the Downtown Area, these improvements can include pedestrian amenities such as lighting, planters that function as seating, seating and railings to lean on, refuse and recycling bins, public art and gateway features, consistent with the Downtown Plan.* **(maximum four points)**

Note: Under this criteria, the applicant needs to explain how and why the offered public improvements exceeds the city standards. Furthermore, the cost of the offered public improvements and dedication shall be equal to or greater than \$ 1100 per unit per point. Should the offered dedication and improvements be redundant to those offered under Section B.3 a thru c of the Circulation Efficiency (CE) category, the value of the redundant improvements will be reduced by \$1100 per unit per point for each point awarded under. Section B.3 ~~a thru e~~ in the CE category. For example, if redundant improvements are valued at \$3300 per unit here, and 2 points were awarded for them in CE, then only 1 point would be awarded for them here. The

improvements offered here and in the CE category also cannot be redundant of those improvements offered in Section B.3.a of the Schools category or B.5 of the Livable Communities Category.

Emphasis will be placed on improvements on or adjacent to the project but consideration will also be given to projects that provide improvements within one mile beyond their project boundaries. **(one - four points)**

g. Applicant will contribute \$1100 per unit to the Public Facilities Non-AB1600 fund. **YES __, or NO __** (Contingent commitments will not receive point) **(one point)**

Note: Proposed developments must be assigned a minimum passing score of five points under this category in order to qualify for building allotments.

Scoring for a multi-year/phased developments includes recognition all public facility improvements committed to be installed in the initial or previous phases of development (project completed to date vis-à-vis improvements completed to date) . The initial or previous phase of development must also be in compliance with the development schedule approved for the project. Ord. 1228 N.S. § 5, 1995; Ord. 1179 N.S. § 9, 1994; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1049 N.S. § 1, 1991; Ord. 1034 N.S. § 1 (part), 1991)

18.78.250 Parks and paths.

A. "Provision of parks, foot or bicycle paths, equestrian trails or pathways.

..... **(10 points)"**

1. The Morgan Hill area has many natural amenities that should be made accessible to its residents. Access should be made readily available by using a variety of methods, including foot and bicycle paths, and equestrian trails. By providing the opportunities to experience the areas natural amenities, a healthier attitude towards caring for and preserving the environment will be encouraged.

B. Standards and Criteria.

1. In lieu of dedicating land, projects of 24 units or less which are not providing parks ~~can~~ **are required to** pay a fee to the city equal to the value of the land prescribed for dedication. The amount of park land dedication or in lieu fee must be consistent with the requirements contained in Chapter 17.28 of this code. For the land dedication to apply, the property must be deeded to the City for public park purposes. Not applicable to passive open space or landscape buffer areas deeded to a homeowners association. **(four points** for projects of 24 units or less which are **not** providing parks)

2. Provides privately owned and maintained on-site recreational amenities which are of greater value and utility from the following list. Projects of 15-24 units may select from any category of amenities to count toward the score. Projects of 25-49 units will receive credit for a maximum of one amenity from the one point category list. To achieve maximum points, projects of 25-49 units must select additional amenities from either the two, three, or four point amenity categories. Projects of 50 units or more will only receive credit for amenities provided from the two point or higher point category lists.(up to four points)

Site Recreation Amenities

<p><u>One point amenities:</u></p> <p>Shuffleboard Horseshoes Bowling green Open space turf areas Cabana or Shade trellis area Passive recreation area and/or gardens Passive water feature (e.g. fountain) Picnic/barbeque area</p>	<p><u>Three point amenities:</u></p> <p>Softball Field Sports Court Restroom area ½ scale Soccer Field Tot lots (age appropriate play equipment/minimum 3 activities) Basketball Court (2 hoops) Child wading pool</p>
<p><u>Two point amenities:</u></p> <p>Volleyball court Outdoor racquetball/handball tilt-up wall Water feature (pond, creek area) Sauna Tree Grove as approved by the City’s Architectural Review Board Community garden plots with water service ½ court basketball (one hoop) Bridle paths Bocce Ball Putting Green</p>	<p><u>Four point amenities:</u></p> <p>Child Care Facility Swimming Pool Tennis Court Recreation Hall Exercise Room Indoor racquet sports court Par 3 course and/or pitch and putt golf course</p>

Points will also be awarded for any proposed amenity found by the Planning Commission to provide recreation or meet the needs of the project residents to a level similar to provided by the above. Point values in the above chart are based on a 50 unit project. For projects of 51 to 100 units, divide the above values by two. For projects of 101 - 150, divide the above point values by three, etc.

3. Provides Class I bicycle pathways or equestrian trails along the project frontage in accordance with the overall community-wide and/or county-wide bicycle master plans. In areas where a Class I bike path is not required, the project provides necessary street improvements and striping for Class II bike lanes. The project must provide at least one quarter mile of Class II bike lane improvements for each 10 dwelling units within the project. **(one point)**

4. *Projects located in the Downtown Area may be awarded up to three points based on the following criteria:*

a. *The project provides mid block pedestrian connections through large buildings that provide access to public or private open space areas and plazas. For the criterion to apply, the pedestrian connection must be continuous and unrestricted. (one point)*

b. *The main project entries are oriented directly to the public streets to encourage connections through the existing network of sidewalks. (one point).*

c. *The project closes gaps in the pedestrian and bicycle network through replacement or extension of sidewalks, pathways or bike lanes beyond the project frontage. (one point)*

4. 5. Proposed project will contribute toward the creation of a neighborhood park by providing a coordinated development plan which locates on-site parks and other permanent open space areas so as to allow expansion of these areas into adjoining future developments. A conceptual plan showing how the future park expansion may be implemented must be included in the project application. The conceptual plan shall identify the park area, list the number of amenities and show the layout of the amenities in the proposed park. Where necessary or appropriate, the plan should also allow these areas to be jointly utilized for storm water detention serving the proposed project and future area-wide development. **(two points)**

5 6. In addition to payment of standard park fees, applicant will pay the lesser of double the required in lieu park fees or \$1100 per point up to \$3300 per unit. **(up to three points) or**

6 7. Applicant (projects of 24 units or less who do not provide a park) will pay the lesser of triple the required in lieu park fees or \$1100 per point up to \$6600 per unit. **(up to six points)**

7 8. Public or private parks provided by the project exceed the dedicated land requirements stated in Chapter 17.28 of the Morgan Hill Municipal Code. **(one point** if exceed the requirement by 20%, **two points** if exceed by 30%, or **three points** if exceed by 40%, or **four points** if exceeds by 50%).

Note: The number of recreational amenities required pursuant to Section 18.18.060 shall be based on the total number of dwelling units within the project, including secondary dwelling units as defined in Section 18.04.164 of this title.

Scoring for a multi-year/phased development includes recognition all recreational amenities provided in the initial or previous phases of development (amenities provided to date vis-à-vis project completed to date). The initial phase of development must also be in compliance with the development schedule approved for the project. (Ord. 1575 N.S. § 8, 2002; Ord. 1517 N.S. §§ 6, 7 & 8, 2001; Ord. 1486 N.S. §§ 7 & 8, 2000; Ord. 1438 N.S. §§ 5 & 6, 1999; Ord. 1404 N.S. § 6, 1998; Ord. 1346 N.S. § 6, 1997; Ord. 1228 N.S. § 6, 1995; Ord. 1179 N.S. § 10, 1994; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.260 Housing needs.

A. "Provision of units to meet the city's need for low and moderate income and elderly housing and the extent to which such provision meets the goals of the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.

..... (15 points)"

2. The city has an obligation to provide adequate housing for all segments of the population in a variety of lot sizes and dwelling types. It must do this in a fashion which creates diversified neighborhood environments and income groups, avoiding concentrations of any single income group in one particular residential neighborhood. A neighborhood mix of ethnic and economic diversity, as required by the housing element of the general plan will therefore be encouraged.

B. Standards and Criteria.

1. Provides affordable housing units for households ranging from very low to moderate income. Most units sold or rented at below market rates will receive increased density.

2. The project provides an additional 10 percent of its units as moderate rate homes. These units would not participate in the City's BMR program but would be in addition to the project's BMR commitment. The final sales price (at close of escrow) for the units will be based on HUD income limits for a family of 4 at the closing date. ***This criterion does not apply to projects awarded points under criterion B.4.b below. (two points)***

3. The project will receive **six points** if it chooses to pay the standard housing mitigation fee computed at ten percent of the total project.

~~Projects are also eligible to receive points in this category based on the percent and level of affordability of below market rate units built within the project. When in the process of~~

determining the number of below market rate units required, there occurs a fraction of a unit, any fraction less than .5 shall be paid as a corresponding fraction or percentage of the per unit cost of the standard housing mitigation fee. In phased developments, developer may carry the fractional share forward into succeeding phases until the fraction reaches .5 or higher. Any fraction of .5 or greater shall be deemed a requirement for one additional below market rate unit. The developer however, may continue to carry the partial credit forward into the next phase(s) of the overall development. Refer to the following charts to compute points.

4 a. Affordable Units For Sale:

Projects are ~~also~~ eligible to receive points in this category based on the percent and level of affordability of below market rate units built within the project. When in the process of determining the number of below market rate units required, there occurs a fraction of a unit, any fraction less than .5 shall be paid as a corresponding fraction or percentage of the per unit cost of the standard housing mitigation fee. In phased developments, developer may carry the fractional share forward into succeeding phases until the fraction reaches .5 or higher. Any fraction of .5 or greater shall be deemed a requirement for one additional below market rate unit. The developer however, may continue to carry the partial credit forward into the next phase(s) of the overall development. Refer to the following charts to compute points.

P o i n t s	10% or Greater BMR Commitment		5% BMR Commitment		Allowable Density Bonus
	Percentage of BMR units LOW	Percentage of BMR units MEDIAN	Percentage of BMR units LOW	Percentage of BMR units MEDIAN	
15*					
13	5	8			15%
12	8	3			12%
12	10				10%

* Applicable to 100 percent affordable deed restricted projects.

For projects that commit to provide a 5% low and 8% median income affordable commitment, in the final phase, where the fractional share of the low and median income units combine to equal .5 or above, the project shall be required to provide one additional median income unit as fulfillment of the project's overall affordable housing commitment.

Affordable Units For Rent:
Applicable to 100 percent rental or non profit agency sponsored project

P o i n t s	10% BMR Commitment		5% BMR Commitment		Allowable Density Bonus
	Percentage of BMR units	Percentage of BMR units	Percentage of BMR units	Percentage of BMR units	
	VERY LOW	LOW	VERY LOW	LOW	
15	10	0			10%
11	5	5			7%
7	0	10	5	0	4%

b. In lieu of BMR commitment, a Downtown Area project may be awarded points for overall housing affordability as follow:

i. 100% of the units are affordable to less than moderate income households (8 points), OR

ii. 75% of the units are affordable to less than moderate income households and 25% of the units are affordable to less than median income households. (10 points)

5. A project may also be awarded 13 points if at least 10 percent of the dwellings are affordable at below market rates and the BMR units are constructed in a joint venture with a non profit builder. The following criteria shall apply to the joint venture development:

a. A letter of intent signed by both parties must be included with the RDCS application.

b. The homes are to be built by the nonprofit agency through a self help building program or other applicable program approved by the City.

c. The project must provide an area for a minimum of 8 BMR units as part of the joint venture agreement. If 10 percent of the project is less than 8 dwelling units, allocations above 10 percent of the project may be drawn from the affordable allotment set-aside if available, to achieve the 8 unit minimum.

d. The price range and target income of the buyers shall be determined and approved by the City and non profit agency prior to the RDCS application.

e. The site and architectural plans for the affordable units shall be shown on the plans and shall be considered part of the market rate application.

Note: If the applicant and non profit agency are unable to obtain the necessary funding, allotments, or encounter other obstacles and are unable to produce the affordable housing through the joint venture agreement; then the applicant will be required to choose one of the

other options to achieve 13 points under criteria B4 in this category. Any unused affordable building allotment transfer shall be returned to the affordable allotment set-aside category.

6. ***In addition to points awarded under criterion B.3 above***, a Micro, Small, or any project having all lots in excess of 20,000 square feet, will receive **six points** if it chooses to pay double the standard housing mitigation fee computed at ten percent of the total project (including replacement units).

Note: Proposed developments must be assigned a minimum passing score of eight points under this category in order to qualify for building allotments. (Ord. 1575 N.S. §§ 9, 10 & 11, 2002; Ord. 1517 N.S. §§ 9 & 10, 2001; Ord. N.S. 1486 § 9, 2000; Ord. 1438 N.S. § 7, 1999; Ord. 1404 N.S. § 7, 1998; Ord. 1346 N.S. §§ 7 & 8, 1997; Ord. 1323 N.S. § 38, 1997; Ord. 1228 N.S. § 7, 1995; Ord. 1179 N.S. § 11, 1994; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.270 Housing types.

A. "The extent to which the proposed development itself consists of a diversity of housing types to meet the goals of the housing element of the general plan.

..... **(15 points)"**

1. In order to develop residential neighborhoods which have a mix of housing types, new residential construction should consider the existing composition of the neighborhood and plan its housing design accordingly.

B. Standards and Criteria

1. Provides for a diversity of housing types:

a. Utilizes a mix of the various housing categories to provide housing diversity as follows by housing type* (a maximum of **seven points, two points** per housing type, excepting the 15% single story housing type which is worth **three points**).

Note. Rental projects will receive **seven points**. Owner occupied single-family attached, ***mixed use CC-R zoned projects*** and multi-family R2 and R3 ***and R-4*** zoned projects will receive **five points** for one housing type, and **seven points** for two or more housing types.

* Housing Types are defined as follows:

- Single-family detached
- Single-family attached (includes one and two unit condominium buildings).

- Multi-family rental or stacked condominium or condominium units in buildings containing three or more units.
- Custom lots
- Mobile homes
- Secondary dwelling units
- Single story dwelling units (must represent at least 15% of the total dwelling units)
- ***Small vertical mixed use (applies only to projects of 15 units or less in size)***

For the above determination, the number of units for a particular housing type when divided by the total number of units in the project, must represent at least ten percent of the total number of housing units in the development (fifteen percent for single story units). The ten percent requirement would be in addition to any housing type used for below market rate (BMR) units. Single story BMR units may be counted toward the fifteen percent overall requirement for single story units.

Note: The percentage requirements stated above are absolute figures. Rounding to the nearest whole number is not permitted. A minimum of 10 percent (fifteen for single story units) is required, i.e. rounding up to get 10 percent is not allowed.

b. Over and above the BMR units committed in this section, the project provides an additional 10% detached units in an R-2 project, an additional 10% attached units in an R-1 project or an additional 10% ownership (e.g., townhouse units) in an R-3 project. (two points maximum)

Projects that have both R-2 and R-1 zoning designations can receive one point for providing an additional 10% detached units in the R-2 project area and/or one point for providing an additional 10% attached units in an R-1 portion of the project.

Note: The 10 percent determination will be based on the overall project. For ongoing projects, this criterion will be applied to the remaining phases only. The percentage requirement stated above shall be an absolute figure, rounding to the nearest whole number is not permitted. A minimum of 10 percent is required, i.e. rounding up to get 10 percent is not allowed. This criterion only applies to for sale projects.

2. Provides for an economic diversity within the project.

a. The proposed project would augment the existing housing stock by providing housing which would be affordable under the income categories described below. A maximum of two points (or four points if for rent) may be awarded to projects which reserve a

portion of the total units (see table below) as affordable to very low income households within 100 percent rental projects or low income (ownership units) in other projects.

Note. A Micro, Small, or any project where all lots are in excess of 20,000 square feet, will receive **two points** if it chooses to pay the standard housing mitigation fee computed at ten percent of the total project (including replacement units), or **four points** if it chooses to pay double the housing mitigation fee.

For Sale Projects

10% or greater BMR Commitment		5% BMR Commitment		
P o i n t s	Provides for 10%+ affordable units LOW	Provides for 10%+ affordable units MEDIAN	Provides for 5% affordable units LOW	Provides for 5% affordable units MEDIAN
4*				
2	5	8		
1.5	8	3		
1.5	10			
1	-5	-5		

* *Applicable to 100 percent affordable deed restricted projects.*

Note: If the applicant and non profit agency are unable to obtain the necessary funding, allotments, or encounter other obstacles and are unable to produce the affordable housing through the joint venture agreement; then the applicant will be required to choose one of the other options to achieve the 2 points in this (for sale) category. Any unused affordable building allotment transfer shall be returned to the affordable allotment set-aside category.

For Rent Projects

	10% BMR Commitment		5% BMR Commitment	
P o i n t s	Provides for 10% affordable units VERY LOW/LOW	Provides for 10% affordable units LOW	Provides for 5% affordable units VERY LOW/LOW	Provides for 5% affordable units LOW
4	10	0		
3	5	5		
2	0	10	5	0
1			0	5

3. For single family/ownership projects, the proposed project provides for a variation of housing sizes within the project. The proposed project provides at least a fifty percent variation in house size from the smallest to largest floor plan and each house size represents at least ten percent of the total units (**four points**). For purposes of making the above determination, there must be at least three (3) different floor plans and a one hundred twenty square foot difference between the size of each floor plan where the floor plans do not exceed 1,500 square feet (less than one hundred twenty square feet difference will be aggregated as one floor plan). Where the floor plans exceed 1,500 square feet, there must be a two hundred square foot difference between the size of each floor plan (less than two hundred square feet difference will be aggregated as one floor plan).

For *small vertical mixed use*, multi-family projects, and 100% affordable non profit agency sponsored ownership projects, the variation will be based on number of bedrooms. A project which provides one bedroom units only, will receive **one point**. A project which provides a mix of one and two bedroom units or two bedroom units only, will receive **two points**. A project which provides dwelling units with a mix of one, two and three bedroom units or dwelling units with three or more bedrooms only within the development, will receive **four points**. Each bedroom category must represent at least ten percent of the total units. Affordable ownership projects must provide a minimum of three floor plans to be eligible for points under this criterion.

Note: BMR units may not be used when determining housing size variations

18.78.280 Quality of construction standards.

A. "Architectural design quality as indicated by the quality of construction and by the architectural elevations of the proposed buildings, judged in terms of architectural style, size, and height.

..... **(15 points)"**

2. The proposed project should create buildings that are responsive to the needs of its users and the environment, while also accomplishing it in an appealing and attractive manner. The overall project design should be compatible and harmonious with existing adjacent residential neighborhoods and land uses, while still maintaining its own special character.

B. Standards and Criteria.

1. Provides harmonious use of exterior building materials and varying front elevations with low repeat factors. A reverse floor plan does not count as a separate elevation. An elevation to be considered different must include significant modifications to the exterior appearance of the structure.

a. Floor plan & elevation repeats 0 -3.5 times: **one point**

For single family detached buildings, repeat factor is the total number of building lots divided by: the number of floor plans multiplied by the number of alternate elevations for each plan (i.e.: repeat factor = number of building lots/(floor plans)*elevations).

For single-family attached or multi-family buildings, repeat factor is the number of structures divided by: the number of different footprints times the number of alternate elevations for each footprint (must have a minimum of two elevations within the project).

2. Uses design and construction that conserve resources:

a. Provides for energy conservation through the use of energy-efficient building techniques, materials, and appliances, such that the buildings consume less energy than allowed by California's Title 24 Building Energy Efficiency Standards, as documented in the energy compliance reports submitted at the time of application for building permits. **(Maximum ~~four~~ five points will be assigned under this criterion)**

i. Uses EPA "Energy Star" labeled windows with low-e coatings and vinyl or metal frames, and includes installation of a high efficiency gas furnace of 90 percent efficiency rating or greater in all dwelling units. Applicant must specify how the 15 percent reduction in energy usage will be achieved. **(two points)**

ii. Provides two separately zoned high-efficiency heating systems in units over 3000 square feet, and units less than 3000 square feet whose floor plans allow effective dual-zoning. For maximum points, at least 60 percent of the dwelling units in the project must be dual-zoned and all units must include the installation of high efficiency gas furnaces with 90 percent efficiency rating or greater. **(up to two points)**

- iii. Installation of air conditioning units with high efficiency condensing unit with a SEER rating of 12 or higher. Must be installed in more than 60 percent of the dwelling units in the project. **(one point)**
 - iv. Installation of a high efficiency gas furnace with an efficiency rating of 90 percent or greater, in all units. Applicable only to projects that do not provide for a reduction in energy usage below Title 24 standards as specified in B3a(i) or the separately zoned heating systems as specified in B3a(ii) above. **(one point)**
 - v. Homes ~~utilize include solar panels for power generation and/or~~ alternate energy sources, such as solar hot water, solar space heating or other energy saving methods not included elsewhere in the category. **(up to two points)**
 - vi. ***Installation of a HERS (Home Energy Rating System) certified heating and air conditioning (HVAC) system with all duct work tested and certified to achieve a minimum 3 percent savings in the home energy budget. (one point)***
 - b. Provides for household water conservation through innovative building techniques that result in reduced water waste, and which exceed current city and state standards. For example, recirculating hot water system with demand pumping, or other water saving plumbing systems or features such as a separate grey water (recycled water) irrigation system. Applicant must be specific in describing how the proposed system exceeds code requirements. Note: Not applicable to water conserving landscape irrigation systems such as sprinkler stations, timers or water saving sprinklers, etc. See scoring under Landscaping Category **(up to one point)**
3. Uses materials and construction techniques that exceed current building requirements of the Uniform Building Code adopted by the city as follows:
- a. Installation of cast-iron drainage pipe and piping insulation between floors for sound reduction of plumbing, and installation of future ready wiring concepts such as home running phone lines from all habitable rooms directly to main phone box rather than looping using RJ6 for television/video and high speed computer access, and CAT5R or equivalent for telephone lines. **(one point)**
 - b. Class A roof covering such as light weight concrete tile, architectural grade composition shingle or better and uses other materials and construction techniques that exceed current requirements, including, but not limited to glued and screwed subfloors, insulation of interior walls for sound, TJI floor joists, and pre-plumb gas lines to dryer along with 220 volt outlet. Not applicable to foundation designs. Applicants must specify how the construction techniques would exceed code requirements **(one point)**

Applicant must be specific in describing how the proposed materials and construction exceed code.

4. Provides architectural variation and differentiation as follows:
 - a. Uses porches, balconies, for any area viewed from the public right of way or multi unit courtyards interior to the project on at least 25% of units to promote a neighborhood feel **(two points)**
 - b. Uses at least two different roof lines and two different pitches throughout the project, i.e. gable, hipped, dormers, Mansard, etc. **(one point)**
 - c. Uses architecture and profiles and massing that conforms and works with the existing surrounding neighborhoods. Applicable only where a project adjoins an existing neighborhood on at least one side or twenty-five percent of the project's frontage. **(one point)**
 - d. Provides a consistent level of architectural relief and detailing on all four building elevations. Where two story rear and or side yard building elevations occur, architectural relief shall include some third dimensional design element such as bay windows, balconies, covered porches, decorative trellis, etc. In addition, each standard trim and base color must represent no more than 15% (project size permitting) of the project. **(up to two points)**
- (Ord. 1575 N.S. §§§§§ 14, 15, 16, 17 & 18, 2002; Ord. 1517 N.S. §§ 13 & 14Ord. 1486 N.S. § 11, 2000; Ord. 1438 N.S. § 10, 1999; Ord. 1404 N.S. § 9, 1998; Ord. 1346 N.S. § 12, 1997; Ord. 1228 N.S. § 9, 1995; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.290 Lot layout and orientation.

A. "Site design quality as indicated by lot layout, orientation of the units on the lots, and similar site design consideration.
..... **(15 points)"**

1. The overall project's site design quality is largely dependent upon the layout of the individual lots. Variations in lot sizes and configurations must take place to accommodate changes in natural terrain and street design, although this is not to be construed as meaning that areas of consistent terrain need not have lot variations. The variations in lot size, shape, and layout would encourage a corresponding variation in house designs and orientations. Site design will incorporate the utilization of the sun and wind to the greatest extent possible for heating and cooling purposes.

- B. Standards and Criteria.
 1. Provides good site design considerations in all lot layouts.
 - a. In context of the overall project, avoids excessively deep or narrow lots. The project also must provide side yards at least 20 percent in excess of the minimum required to avoid crowding and to enhance spatial relationships. **(one point)**

- b. Provides building separations in apartment or condominium developments that are at least 20 percent in excess of minimum code requirements. **(one point)**
- c. Avoids excessive use of sharp angled lots which waste land and constitute poor building sites. **(one point)**
- d. Avoids creating lots which require driveways greater than 150 feet in length for access. **(one point)**
- e. A sufficient transition in lot sizes, or building sizes in R-3 developments, is proposed in the site plan design to allow compatibility between existing and proposed neighborhoods. **(one point)**
- f. Over-all excellence of lot layout. Layouts deemed to be average will receive **zero points**, above average layouts will receive **one point**, and superior layouts will receive **two points**.

For scoring purposes points will be assigned as follows:

Average Project: A project requiring 2 or more major design changes, or which has 4 or more minor problems. **(zero points)**

Above Average Project: A project requiring 1 major design change, or which has 3 minor problems. **(one point)**

Superior Project: A project requiring no major changes and which has 2 or less minor problems. **(two points)**

This criterion shall not apply to that portion of the project awarded a building allotment prior to October 1, 1999, except where the inclusion of the earlier allocated phase(s) would result in a higher score.

- 2. Provides street design which complements lot layout and building orientation:
 - a. Locates streets and arranges units to provide park/open space area that is aggregated into large meaningful area(s) that are conveniently located within the development. **(one point)**
 - b. Locates streets, design lots, and arranges units to enhance neighborhood security by arranging a minimum of 75 percent of the units so that entrances are visible from the public right of way or private circulation areas. **(one point)**
- 3. Provides a variety of setbacks which complements the overall site design.
 - a. A minimum five-foot front setback variation is provided between adjoining units for single-family dwellings, and four-foot front setback variation is provided between adjoining buildings for multi-family developments. **(one point)**

b. A minimum five-foot rear setback variation for single-family dwellings, and four-foot rear setback variation for multi-family dwellings is provided between adjoining units. **(one point)**

c. The proposed project provides at least a four foot variation in standard lot widths (excluding cul-de-sac lots) and each lot width represents at least ten percent of the total lots. For purposes of making the above determination, there must be at least three different standard lot widths and at least a four foot difference in the width of each standard lot. **(one point)**

d. Uses garage placement to provide lot variation. At least 25% of units have side-loading, detached, rear garages, or two car garages with tandem parking space to accommodate a third vehicle inside the garage. (one point, when 25% of the units have garage orientation as stated above; two points when 50% of the units have garage orientation as stated above) Multi-family developments may satisfy this criteria by locating garages, carports, and parking spaces at the side or rear of buildings at locations not visible from the public right-of-way. **(up to two points)**

4. Uses lot layout and design techniques that reduce noise. Such techniques where appropriate include increased setbacks, significant landscape buffer areas, sound insulation board in the building construction, placement of air conditioning units away from property lines and side yard areas to minimize noise impacts to adjoining dwellings, etc. **(up to two points)**

5. *For projects in the Downtown Area, third story building setback areas are articulated with design elements that provide visual interest, such as use of outdoor decks and balconies. (one point)*

6. *In the Downtown Area, the project addresses building to building variation in the façade and building space above through use of architectural details such as bay windows, decorative belt courses, moldings around windows, and planter boxes, etc., that span from one building to another. (one point)*

7. *Downtown area projects will receive one point for providing shared parking and/or rear parking lots. (one point)* (Ord. 1677 N.S. § 1 (part), 2004; Ord. 1575 N.S. §§ 19, 20, 2002; Ord. 1517 N.S. §§ 15 and 16, 2001; Ord. 1486 N.S. § 12, 2000; Ord. 1438 N.S. § 11, 1999; Ord. 1404 N.S. §§ 10, 11, 1998; Ord. 1346 N.S. § 13, 1997; Ord. 1228 N.S. § 10, 1995; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.300 Circulation efficiency

A. "Site and architectural design quality as indicated by the arrangement of the site for efficiency of circulation, on-site and off-site traffic safety and privacy.

..... **(15 points)"**

1. An efficient circulation system is one which accommodates various regular transportation modes (walking, biking, private automobile, and public transit) in a safe and unified manner. Future residential areas should incorporate design elements whenever possible to make these forms of transportation more convenient and safe for the users.

B. Standards and Criteria.

Note: Project scoring in this section shall be based on the overall project master plan and shall include improvements completed in previous phases of the same development.

1. Streets, access ways and parking are designed for safe and efficient circulation.

a. Local streets or access-ways interior to the project are designed to discourage fast traffic using curvilinear roads or traffic control devices. **(one point)**

b. Provides for the future extension of streets ~~or drive aisles~~ for proper access or circulation to adjacent properties by providing one or more stubs ***or other improvement internal to the project*** ~~for the future extension of streets~~. The future street extension(s) must be consistent with the General Plan or other adopted circulation plans **(up to two points)**

c. ***Provides for the future extension of drive aisles, or connections to shared access drives or adjacent parking lots.*** **(one point)**

d. Interior streets and/or drive aisles are designed to meet all city safety and parking standards and allow for a looping pattern of circulation. **(one point)**

e. Eliminates existing stub or substandard streets. Frontage improvements will not apply to this criteria unless the improvements occur along an arterial or the project completes full width street improvements along the project frontage. **(up to two points)**

f. Avoids short blocks between existing and/or proposed streets. A short block is considered to be less than two hundred fifty two feet from centerline to centerline of streets. Within a project, an entry aisle less than two hundred fifty two feet from the entry is acceptable. This criteria is not applicable where a driveway and/or drive aisles and curb cuts are used to provide access to the entire project site. **(one point)**

g. Provides a minimum 20-foot clear view back-out distance between enclosed garage space and drive aisle. **(one point)**

h. When possible, access to the project is provided from at least two separate streets. If access to separate streets is not possible, there must be a minimum of two hundred feet between access points to the project on the same street. **(one point)**

i. Provides appropriate landscape islands and entry monuments/gateway features. **(one point)**

j. Project provides circulation to facilitate emergency response and patrol as determined by the fire chief and police chief. Off-set intersections are avoided. The project shall include specific information to provide for turnarounds and secondary access proposal for phased projects. **(one point)**

k. Project provides public parking in the Downtown Area consistent with the Downtown Plan (i.e., at mid block areas between E. Second and E. Third and E. Third and E. Fourth Streets, on the east side of Depot Street, etc.) (up to two points)

2. Promotes the privacy of residential neighborhoods.

a. Internal project circulation is designed for use primarily by local residents. **(one point)**

b. Street layouts are designed to avoid the creation of undesirable situations such as double frontages, utility easements in rear or side yards of private property, or developable land locked property. **(one point)**

3. Provides for dedication and/or improvement of extensions to existing streets *and shared parking lots* outside of the project boundaries. The cost of the offered dedication and public improvements shall be equal to or greater than \$1100 per unit per point. Should the offered dedication and improvements be redundant to those made under 1f. of the Public Facilities (PF) section, points will be awarded here first and then any excess applied to the PF section. For example, if \$1500 per unit of improvements were recorded in this section and in PF, 1 point would be awarded here and \$400 per unit would be available to add to any non-redundant improvements made under the PF category, under Section B.3.a of the Schools category or under B.5 of the Livable Communities category.

Projects which offer to complete adjacent or nearby off-site public facility improvements which were committed to be installed by another project under a previously approved application will not receive points for the same commitment. **(Maximum of Up to two points)**

~~a. Provides for dedication of extensions to existing streets outside of the project boundaries. **(one point)**~~

~~b. Provides improvements for dedicated extensions of existing streets outside of the project boundaries. **(one point)**~~

~~c. Provides dedication and improvement of street extensions for existing streets outside of the project boundaries. **(two points)**~~

4. In R-3 and higher density mixed use projects, the proposed development minimizes conflicting back out movements by using single loading streets or drive aisles to access individual parking spaces. **(one point)**

5. In R-3 and higher density mixed use projects, interior parks and recreation amenities are located away from parking lots and circulation aisles. **(one point)**

6. Projects located in the Downtown Area may be awarded up to four points based on the following criteria:

a. The project provides mid block pedestrian connections through large buildings that provide access to public or private open space areas and plazas. For the criterion to apply, the pedestrian connection must be continuous and unrestricted. (one point)

b. The main project entries are oriented directly to the public streets to encourage connections through the existing network of sidewalks. (one point).

c. The project closes gaps in the pedestrian and bicycle network through replacement or extension of sidewalks, pathways or bike lanes beyond the project frontage. (one point)

d. The project provides bicycle parking with racks at convenient locations near building entrances and bus stops. (one point)

Note: For B4 3 above, emphasis will be placed on improvements for dedicated extensions of existing streets within one mile ~~beyond of~~ the project boundaries.

Proposed developments must be assigned a minimum passing score of seven points, *or a minimum of 5 points for Downtown Area projects* under this category in order to qualify for building allotments.

(Ord. 1575 N.S. § 21, 2002; Ord. 1517 N.S. § 17, 2001; Ord. 1486 N.S. §§ 13 & 14, 2000; Ord. 1438 N.S. § 12, 1999; Ord. 1346 N.S. § 14, 1997; Ord. 1228 N.S. § 11, 1995; Ord. 1179 N.S. § 14, 1994; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.310 Safety and Security

A. "Site and architectural design quality as indicated by the amount of private safety and security provided in the design of the individual structures.

..... **(10 points)"**

1. Residential structures should create the feeling of comfort and peace of mind by using design and materials that increase safety and security. The lighting, glazing, and positioning of non-private or semi-private areas, and access areas must facilitate their natural surveillance by residents and formal authorities.

B. Standards and Criteria.

1. Enhances safety and security as follows:

Provides fire escape ladders for upper floor bedrooms and one mounted fire extinguisher (rated 2A10BC) for up to the first 1,500 square feet of floor space, and one additional extinguisher for each additional 1,500 square feet of floor space or fraction thereof. **(1/2 point)**

b. Provides a first aid kit with a poison control document to be installed in the kitchen area of the home. **(1/2 point)**

c. Any other fire protection device or construction technique approved by the fire chief not already required according to the Uniform Fire Code. **(½ point).**

d. Provide outdoor lighting to meet all police department specifications. **(½ point)**

- e. Install illuminated address numbers for each unit and painted reflective curb numbers where possible. **(one point)**
- f. Any other intrusion protection device or construction technique approved by the police chief. **(1/2 point)**

Note: Application must stipulate that the reflective painted curb addresses will be maintained by a homeowners association. A Small or micro project will receive one point without the requirement for painted curb addresses.

- 2. Use of noncombustible siding materials in the following manner:
 - a. One point when noncombustible siding is used on at least 50 percent of the total units and on at least 50 percent of the siding of an individual unit, or;
 - b. Two points when noncombustible siding is used on at least 50 percent of the total units and comprises at least 75 percent of the siding of an individual unit, or;
 - c. Two points when noncombustible siding is used on at least 75 percent of the total units and comprises at least 50 percent of the siding of an individual unit.
- 3. Installation of an intrusion, fire alarm and heat detector system to be monitored by a central station, or to include auto dialer which meets city ordinance. For multi-family projects, points will be awarded for a fire alarm system without central monitoring, and NO intrusion system. **(two points; three points when the developer includes a one year monitoring contract with the home purchase and commits to deliver to the homeowner a city specific responsible listing card that the City Police Department can keep on file)**
- 4. Provides residential fire sprinkler system according to NFPA Chapter 13D specifications. **(three points)**
- 5. Neighborhood Emergency Preparedness Program administered through a homeowners association or central property management. **(one point)**
- 6. Developer to provide a hardwired carbon monoxide detection device or devices with battery backup. The installation of the devices are to be located per manufacturer's requirement with at least one detector per floor of the residence. **(one point)**
- 7. The developer shall include provisions in the Covenants, Conditions and Restrictions (CC&R's) of the Homeowner's Association which directs a Board representative to the City of Morgan Hill Police Department's Community Service Officer to enact a neighborhood watch program to be established as part of the first phase of the development. For rental projects, neighborhood watch programs shall be administered through a central property management company. **(one point, criterion does not apply to small or micro projects)**

NOTE: Proposed developments must be assigned a minimum passing score of five points under this category in order to qualify for building allotments.

18.78.320 Landscaping, screening and color.

A. "Site and architectural design quality as indicated by the amount and character of landscaping and screening and color of buildings.

..... **(10 points)"**

1. All trees, shrubs, ground cover, walls and fences, mounding, landscape furniture, paths, lighting, etc., should be compatible with the topography and other characteristics of the site, the character of adjacent quality landscaping, and the architectural features of adjacent structures. Efficiency in exterior design and landscaping is an important part of the character of a home. A gain can be made in terms of heating and cooling, noise abatement and pest control. The functions of plants should be the basis for their use in environmental design.

B. Standards and Criteria. **(Maximum ten points)**

(Note. Custom lots and custom lot developments may receive points in pertinent sections below where landscaping will be provided by the lot owner. This requires development agreement commitments being recorded against each such lot, including a statement that landscaping requirements must be in place or bonded prior to receiving City approval for occupancy.)

1. Uses landscaping techniques that enhance the quality of the site.

a. Applicant agrees to provide twenty-four inch box-size trees from a city approved list, with a minimum height of nine feet and a spread of three to four feet. The box-size trees will be provided within the development at a ratio of one box-size tree per ten trees provided with the landscape area to be installed by the developer. The one box size tree per ten trees calculation does not include street trees. **(one point)**

b. Provides sufficient planting around all necessary and appropriate group parking to achieve shading and visual screening as viewed from the public street. **(one point)**

c. Varied front yard landscaping plans are installed by the developer. For multi-family projects, this criterion shall apply to varied landscaping installed along the project frontage and for the landscaping installed in front of the buildings in the interior portions of the project. **(one point)**

d. Deciduous trees will be planted along the south facing side of homes or buildings to conserve energy by giving shade in the summer and maximum solar gain in the winter. **(one point)**

e. All street trees are twenty-four inch box trees from the city approved list. ~~(one tree per lot, two trees per corner lot = one point; two trees per lot, three trees per corner lot = two points)~~ **(one point)**

f. *Project provides or conforms to a Street Tree Master Plan that addresses tree selection, location of trees on each lot, proper tree spacing, and preservation of any existing trees (excluding orchard trees).* **(one point)**

2. Landscape planting and irrigation systems are designed to conserve water usage.
 - a. Drought tolerant grasses are used for lawn areas and no more than twenty-five percent of the landscape area is covered with lawn. The twenty-five percent lawn coverage calculation is exclusive of landscape area within parks. **(half point)**
 - b. Automatic irrigation systems utilize separate valves and circuits for trees; shrubs and ground covers; and lawn areas. Minimum of three separate valves required. A separate valve shall be provided for the following areas: front lawn, rear lawn, and for trees, shrubs and groundcover (combined) where viable. If trees, shrubs, and groundcover cannot be combined under 1 valve, a separate valve for trees shall be provided, resulting in a minimum of 4 separate valves required. Water conserving irrigation system is also used within the development, i.e., drip irrigation. **(half point)**
 - c. The landscape to be installed by the developer will include hardscape coverage such as decorative paving, wood decking, decorative stone and similar non-irrigated areas on at least fifteen percent of the landscape area. Pedestrian walkways across circulation aisles are not included in this item. **(half point)**
 - d. For at least 75% of all plant material, uses water conserving plants contained on the Selected Plant List, Appendix A of the City Water Conservation Landscape Guide. **(half point)**
 - e. Uses a separate water source (e.g., well, import or recycled water) to irrigate common area landscape areas and front yard areas that are maintained by a homeowners association. **(up to two points)**
 - f. Project connects to an existing water supply separate from the City's water system (e.g., an off-site irrigation well) for landscape irrigation. Applies to small and micro projects only. **(one point)**
 3. Landscaping is installed on all areas visible from public and private rights-of-way. **(one point)**
 4. *Project uses pervious pavement in all open parking lots, driveways and sidewalk areas to minimize drainage runoff. Project must be located in an area of rapid soil permeability for criterion to apply. (two points)*
 5. *Downtown Area project uses building color to enhance architectural details and add to the visual interest of facades. (one point)*
- (Ord. 1517 N.S. § 19, 2001; Ord. 1438 N.S. § 13, 1999; Ord. 1346 N.S. § 16, 1997; Ord. 1304 N.S. § 3, 1996; Ord. 1124 N.S. § 1 (part), 1993; Ord. 1034 N.S. § 1 (part), 1991)

18.78.330 Natural and environmental features.

A. "Site design quality in adapting the development to the setting, including the preservation of vegetation, trees, natural terrain, and other natural and environmental features.

..... **(10 points)"**

2. The proposed development should always adapt itself to the environment rather than vice-versa. The residences and supportive infrastructure shall be designed with nature in mind, by following the natural form of the land, preserving unique natural features and environmentally sensitive areas, arranging building sites around existing trees, and "blending in" the development to the surroundings.

3. A high quality project is one that uses what is available but also improves the total environment for the people who live within and nearby.

B. Standards and Criteria.

1. The proposed development utilizes environmental preservation techniques.

a. Foundation types are designed to minimize grading of the site and road alignment follows and maintains existing ground elevation to the greatest extent possible. Minimal grading is considered a fill or excavation of less than two feet in depth (three feet is acceptable for detention ponds). **(one point)**

b. Restricts the amount of runoff caused by impervious surfaces and the covering of land area suitable for percolation where applicable. **(one point)**

c. Each building site, preserves significant trees as defined in Section 12.32.020G of the Morgan Hill Municipal Code. ~~(the number of trees preserved must be proportional to project size and the number of existing trees)~~, but also allows enough flexibility in the final location of the final house design to fit the house to individual trees and detailed grade characteristics. **(one point)** *Note: Requires an arborist report to confirm that the tree(s) are significant and the condition or health of the tree(s) are suitable for preservation.* Scoring will be as follows:

_____ i. Project does NOT preserve significant trees or locate sites as outlined. ~~(minus one point)~~

_____ ii. Project has no such trees to preserve. **(zero points)**

_____ iii. Project has trees and/or terrain and DOES preserve them. **(up to two points)**

d. *Preserves the natural setting by locating park or common open space areas around significant trees. (one point)*

e. Considers, preserves or improves natural conditions on or adjacent to the site such as wildlife habitats, streams, those watercourses the Santa Clara Valley Water District recognizes as creeks (such as the Llagas, West Little Llagas, Fisher, and Coyote creeks) when appropriate and preserves riparian habitats in a natural state. Scoring will be as follows:

i. Project has such a site and does NOT preserve/improve it. **(minus one point)**

ii. Project has no such site. **(zero points)**

iii. Project has such a site and preserves and improves the natural conditions. **(up to two points)**

(Note: Only improvements made to an on-site area qualify for maximum points.)

2. The proposed development creates an environment that enhances the quality of life for the people who live in the development and the local neighborhood.

a. Uses design and layout techniques that give individuals maximum privacy within and outside the homes. Such techniques include the off set of windows between units, alternating outdoor patio areas and entrance and consideration of fence height in relation to grade changes. **(one point)**

b. Uses various site development practices to protect existing open space, hillsides and agricultural land with maximum points awarded for the protection of areas external to the project. **(up to two points)**

c. Arranges buildings, access-ways and locates parking areas and open space to minimize the use of sound walls next to the freeway, the railroad tracks, arterial or collector streets. **(two points)**

3. Project reduces construction waste sent to landfill sites by agreeing to implement at least two of the following recycling methods during construction: **(one point)**

- i. Dry wall is source separated and recycled;
- ii. wood waste is source separated for recycling or composting;
- iii. cardboard containers and boxes are source separated and recycled.

4. *At least 50% of the homes include solar electric panels for power generation providing at least 25% of the home electricity requirement. (one point)*

5. *Project incorporates the following Green Building Design Concepts:*

- i. *Uses certified Forest Stewardship Council (FSC) plywood (1/2 point);*
- ii. *Uses building insulation with minimum 25% recycled content (1/2 point)*
- iii. *Uses light exterior roof colors to reflect the sun's heat. (1/2 point)*
- iv. *Uses low to zero emission volatile organic compounds (VOC) and adhesives. (1/2 point).*

18.78.335 Livable Communities.

A. "The extent to which the proposed development exhibits overall project excellence and/or incorporates or otherwise embodies the concept of Livable Communities, such as proximity to transit, pedestrian orientation, efficiency of street system, mixed use, infill and maximization of use of existing infrastructure.

..... **(10 points)"**

B. Standards and Criteria

1. Proposed project phase(s) are subjectively judged by the Planning Commission to be superior with respect to overall project excellence. **(two points when awarded by a super majority of the voting members, or one point when awarded by a majority of the voting members of the Planning Commission)**

Note: The determination of project excellence will include input from the Building and Planning Divisions and the Public Works Department regarding the performance of the developer during any previous building permit processes. The timeliness and accuracy of the application submittal by the developer for any previous project will be an important consideration. Negative performance factors include more than two plan checks and/or projects which submit for building permits prior to ARB approval and prior to application for Final Map approval. No recommendation will be provided for developers who have not previously built in the City.

2. Provides low-maintenance on-site walkways and on-site bike paths throughout the development to maximize their use and promote safety. This criteria does not apply to city standard sidewalks, or where the provided path is adjacent to city standard sidewalks. **(one point)**

3. Encourages the use of public transportation in residential areas by constructing bus shelters, benches, reinforced street sections or bus pullout areas **and** these improvements are located on an approved or planned Valley Transportation Agency (VTA) transit route and accepted by the VTA for maintenance. A letter from the VTA shall be submitted confirming VTA's acceptance and maintenance of the proposed bus stop. For planned bus routes, the VTA letter shall provide confirmation of the future bus route extension. This criterion may apply to a bus stop constructed in the initial or previous phase that would serve subsequent phases of the same development. **(one point)**

4. Project is located within a quarter mile walking distance of the bus stop or other transit facility (the W. Main/Hale Park & Ride Facility, Caltrain Station or Route 68 regional transit line). **(two points; one point if the project is within ½ mile walking distance of the above transit facilities or a ¼ mile of other approved bus routes)**

5. Provides access to stores, services, schools, employment areas by constructing sidewalks where it does not currently exist within a quarter mile of the development. The cost of the sidewalk improvements shall be equal to or greater than \$1100 per unit per point. A value greater than \$1100 per unit can be credited to other categories (Schools, Public Facilities or Circulation) **(one point)**

6. Creates a continuous building frontage along the streetscape with buildings fronting on public streets, and applies the Valley Transportation Authority's standards for walking distance to amenities such as stores, services, schools and major employment centers.

(one point)

7. Project is designed as "vertical mixed use" with retail/commercial on the ground level and residential above. Larger mixed use projects that combine commercial and residential uses will receive maximum points in this category only to the extent that the residential and commercial uses are well integrated with each other, sufficient pedestrian connections between uses exist and parking fields are minimized from the public view **(up to two points)**

~~8. Provides external bicycle paths, bike lanes or bicycle routes improvements identified in the January 2001 City of Morgan Hill Bikeways Master Plan. Design of the bicycle improvements shall be in accordance with VTA's Bicycle Technical Guidelines. Maximum points will be awarded to projects that provide a continuous bike path or bicycle lane improvements between the project and destination area such as stores, services, schools and major employment centers. The cost of the bicycle improvements shall be equal to or greater than \$1100 per unit per point. A value greater than \$1100 per unit per point awarded can be credited to other categories (Schools, Public Facilities or Circulation) **(up to two points)**~~

8. Builds to planned densities. Downtown Area projects that build in the upper one third of the allowable density range will be awarded two points; projects that build to the upper 15 percent of the density range will be awarded three points.

9. Projects in the Downtown area are designed to fill in on existing utilities and require no new streets or infrastructure improvements. The existing infrastructure (sewer, water, storm drain and streets), must be of sufficient capacity to serve the development. (two points)

Article III. Procedures for Micro Project Competition

18.78.340 Eligible projects.

An eligible project is any type of residential development consisting of a maximum of six dwelling units. A project must also be located on a site which represents the ultimate or finite development potential of the property. In order to be considered as ultimate development, no further subdivision and/or residential development of the property would be possible pursuant to the general plan and this title. The only exception to this limitation would be the construction of a secondary dwelling unit on a single-family lot. (Ord. 1575 N.S. § 23, 2002; Ord. 1397 N.S. § 1, 1998; Ord. 1323 N.S. § 39, 1997; Ord. 1228 N.S. § 14, 1995; Ord. 1034 § 1 (part), 1991)

18.78.350 Filing periods.

Applications for development allotment evaluations shall be filed with the community development department ~~on October 1st~~ ***no later than 21 months prior to the fiscal year of the building allocation or an earlier date as established by the City Council.*** (Ord. 1391 N.S. § 1. 1998; Ord. 1228 N.S. § 15, 1995; Ord. 1034 § 1 (part), 1991)

18.78.360 Planning officers' review.

The planning officer shall review each application to determine whether or not the proposed development conforms to the city's general plan, Title 17 and this title's requirements. If the planning officer determines that a proposed development does not conform to the general plan, Title 17 and this title, the application shall be rejected. If the application is rejected, an applicant may appeal the planning officer's determination in the manner prescribed in Section 18.78.100(B) of this chapter. (Ord. 1034 § 1 (part), 1991)

18.78.370 Evaluation--Standards and criteria.

A. Projects will be evaluated according to the standards and criteria contained in Sections 18.78.200 through 18.78.330 of this chapter.

B. In order to be eligible for building allotments, a project must receive at least seven and a half points in Part 1 and one hundred fifty points in Part 2 of the allotment evaluation. Those that fail to receive a minimum passing score will have the opportunity to improve their designs and reapply during the next competition.

C. To provide a more streamlined process, each micro project application shall be evaluated by the planning officer. The Part 1 criteria shall be applied in the manner consistent with the provisions contained in Section 18.78.200 of this chapter. However, under Part 2 of the evaluation, each micro project shall be assigned the following minimum scores:

<u>Category</u>	<u>Minimum Score</u>
Schools	17 16
Open space	12
Orderly and contiguous	2
Public facilities	5
Parks and paths	5
Housing needs	8
Housing types	12
Quality of construction	8
Lot layout and orientation	9
Circulation efficiency	8
Safety and security	5
Landscaping	7
Natural and environmental	7
Livable Communities	5
Total	110 109

D. The planning officer shall examine each proposed development and shall rate each development by the assignment of no more than the maximum number of points allowable on each of the following categories: schools, open space, orderly and contiguous, public facilities, parks and paths, housing needs, quality of construction, safety and security and livable communities. The difference between the minimum score provided above, and the maximum score assigned in each of the aforementioned categories, shall determine a project's rating and eligibility for building allotments. In the event that two or more projects receive an equal number of points, the planning officer shall evaluate each project according to the remaining categories.

E. The planning commission shall review the planning officer's evaluation when the number of residential units in proposed developments exceeds the number of allotments authorized for the competition. (Ord. 1304 N.S. § 4, 1996; Ord. 1034 N.S. § 1 (part), 1991)

18.78.380 Award of allotments.

A. Proposed developments which have received a minimum of one hundred fifty points under Section 18.78.120 may be awarded an allotment for the following fiscal year. Where the number of residential units in proposed developments which have received the required number of points for a development allotment evaluation exceed the numerical limits established by the city council, the available allotments shall be awarded by the planning commission on the basis of the number of points received in Section 18.78.120 starting with the proposed developments receiving the most evaluation points and proceeding in order down the list until the numerical limit established by the council has been reached. Where allotments are made on the basis of a comparative standing on the list, any applicant who has received the required minimum number of points, but who is not high enough on the list to receive a development allotment, may appeal the matter of allotment evaluation to the city council.

B. Where the number of residential units in proposed developments which have received the required number of points for a development allotment evaluation are less than the numerical limits established by the city council, the available allotments shall be awarded by the planning officer in order of applications received. ~~An open filing period shall then be established and any unused allotments shall be awarded to projects in order of applications received, provided the new projects have received the required minimum score of seven and a half points under Part 1 and one hundred fifty points under Part 2 in separate evaluations.~~ *Any unused allocations shall be awarded by the Planning Commission to on going or next in line projects in other competition categories provided the unused allocation is awarded no later than 16 months prior to the fiscal year of the building allocation.* (Ord. 1391 N.S. § 2; Ord. 1228 N.S. § 16, 1995; Ord. 1034 N.S. § 1 (part), 1991)

18.78.390 Distribution of allotments.

The total allotments shall be distributed on the basis of points received and without regard to any particular geographical distribution. A final determination on the distribution of allotments shall be approved by the city council prior to the February competition. (Ord. 1228 N.S. § 17, 1995; Ord. 1034 N.S. § 1 (part), 1991)

18.78.400 Appeal procedure.

A. An applicant may appeal the planning officer's evaluation to the planning commission, or the planning commission's evaluation to the city council by filing a written notice of appeal with the community development department within fifteen days after the notice of evaluation has been mailed as described in Section 18.78.125(A).

B. In the event an appeal of the planning officer's evaluation is filed, the planning officer shall place the matter on the next available agenda for a regular planning commission meeting. The planning commission shall consider the appeal at such regular meeting at which time the commission will hear the applicant or his representative and such other persons as may be able to assist the commission in the determination of the matter on appeal. The commission may affirm or modify the allotment evaluation. The planning commission's evaluation may be appealed to the city council in the manner prescribed under Section 18.78.130 of this chapter. (Ord. 1034 N.S. § 1 (part), 1991)

18.78.410 Development allotment application.

A. An application for a development allotment shall be made to the community development department on a form provided by the city. Such application shall contain the following information and be accompanied by the documents:

1. Uniform Application.
 - a. Five sets of submittal plans,
 - b. Current title report,
 - c. Filing fees;
2. Site Development and Landscape Plans.
 - a. Scale, engineering scale not to exceed one inch equals forty feet on 24" x 36" sheet. Also provide a reduced size copy on 11" x 17" size sheet attached to the project narrative,
 - b. Small inset vicinity map to show the relationship of the proposed development to adjacent development, the surrounding area and the city,
 - c. A plan showing general lot layout, general lot sizes, typical lot dimensions, general notes and information; show storm drainage routes and lines, and areas for storm water retention,
 - d. Include street alignments showing coordination with city streets and proposed rights-of-way; the plan should also show proposed public works improvements,
 - e. Show proposed planting areas, park areas, and any other proposed uses,
 - f. Include the name, address and telephone number of the applicant, architect and/or engineer; also a graphic scale and north arrow;
3. Preliminary Architectural Plans.

- a. Scale: architectural drawings should be included at 11" x 17" size sheet(s) attached to project narrative,
 - b. Provide front elevations and range of possible square footage for all models within the project,
 - c. Indicate on the plans the type of housing provided, i.e., multifamily, BMR, senior, single-family, etc,
 - d. Provide illustrative building elevations showing all sides of one typical model and front elevations of other buildings within the proposed development;
4. Project Narrative Questionnaire: submit three copies of the completed project narrative questionnaire;
 5. Plan Preparation Guidelines.
 - a. All plans shall be drawn on uniform sheets no greater than twenty-four inches by thirty-six inches, or as approved by the community development director prior to submittal,
 - b. All plans shall be stapled together along the left margin,
 - c. All plans shall be folded into one-eighth sections or folded in such a manner that the size does not exceed nine inches by twelve inches,
 - d. All plans shall be clear, legible and accurately scaled.
 - B. Each application shall be accompanied by a reasonable fee set by the city council as prescribed in Section 18.78.090(B) of this chapter. (Ord. 1391 N.S. § 3, 1998; Ord. 1034 N.S. § 1 (part), 1991)

Revised June 29, 2005



CITY COUNCIL STAFF REPORT

MEETING DATE: July 6, 2005

Agenda Item # 17

Prepared By:

Program Administrator

Approved By:

Public Works Director

Submitted By:

City Manager

SOLID WASTE PROGRAM CHANGES

RECOMMENDED ACTION(S):

Authorize the City Manager to execute the franchise agreement subject to the review and approval of the City Attorney

EXECUTIVE SUMMARY: Staff has been in discussions with South Valley Disposal and Recycling for the past two years regarding options for expanding recycling services in the community. Staff has primarily been interested in this expansion as a way of increasing the community's waste diversion rate since the City's diversion rate has barely met the legal minimum for the past two years.

Analyses of the City's residential waste as currently disposed have found a significant amount of food waste and other organic materials, approximately 35%, that could be diverted with a recycling program change. The recommended change would be to accept food waste and soiled paper waste as a component of the yard trimmings program. This change would necessitate collecting yard trimmings on a weekly basis instead of the current biweekly schedule. The other significant additions to the recycling program proposed are the inclusion of plastic bags, small pieces of scrap metal, and household batteries. South Valley also proposes to provide each residence with a garbage collection cart.

Since South Valley's current franchise agreement expires in 2007 and the change to the yard trimmings program would necessitate the purchase of capital equipment, they have requested an extension of their franchise agreement. Staff has found that South Valley provides excellent service to the community and is deserving of a seven year extension to the franchise. Staff has analyzed the rates paid for service in other communities and believes that the residents of Morgan Hill are getting an excellent mix of supplies and services at an affordable rate – especially while maintaining unlimited garbage collection.

Staff has carefully analyzed the existing franchise agreement and the current relationship that the City and the community have with South Valley. As a result of this analysis, the City has developed a new franchise agreement document that reflects the needed program changes, changes some of the day-to-day City/South Valley interactions, and modernizes the agreement language with new legal protections. The attached list summarizes the major changes to the franchise.

The City's Recycling and Beautification Advisory Committee was instrumental in assisting staff with the development of these proposals. The Utilities and Environment Subcommittee approved the program changes at their April meeting.

FISCAL IMPACT: A rate increase of 3.29% (\$.70 per month) for residences and 2.72% for other customers is proposed in order to pay for the additional programs. In order to minimize the rate impacts to the community, staff proposes that the franchise fee be lowered from 16% to 15.5%. This will result in a slight reduction to the funding provided for Environmental Programs – but no reduction in General Fund revenues. This change is appropriate because some of the items currently being paid for by Environmental Programs will now be included in South Valley's rate base. Similarly, staff proposes that \$20,000 in Environmental Programs funds be made available to South Valley annually for three years to offset the cost of air quality improvements without burdening the ratepayers with an increase.

UTILITIES AND ENVIRONMENT SUBCOMMITTEE REPORT

RE: SOLID WASTE PROGRAM CHANGES



At the Utilities and Environment Subcommittee meeting of April 18th, staff described proposed changes to the City's solid waste program. These changes were explored primarily to enhance the City's waste diversion rate which is currently barely meeting the minimum State's legal threshold of 50%.

In addition to many minor changes to the solid waste franchise, there are three major enhancements to the City's system being proposed. These are:

1. The addition of food waste and food-contaminated paper waste to the City's yard trimmings collection program and an increase in yard trimmings collection frequency to once per week;
2. The provision of a solid waste container to all residents for garbage collection; and
3. The inclusion of plastic bags, scrap metal, and household batteries into the City's collection program.

In exchange for these additional services, it is proposed that South Valley receive a minor rate increase and a seven year extension of their franchise agreement.

The Subcommittee evaluated the proposed changes and found that the proposal is consistent with the following policy goals:

- Increases the City's Recycling Rate - By adding materials to the recycling program, the City's recycling rate will increase and the City will be able to maintain State Recycling Law (AB 939) compliance while continuing to enjoy unlimited garbage service;
- Enhances Resident Service and Convenience – Service will be enhanced by the collection of organic material (yard trimmings and food waste) every week and by the provision of a free garbage container;
- Solid Waste Collection Rates Remain Low and Competitive with Similar Communities – The City's collection rate will remain the very lowest among the communities with unlimited garbage collection service in the County (Morgan Hill's Proposed Rate - \$21.82, Milpitas - \$23.55, Sunnyvale - \$29.37);
- No Impact to the General Fund – Solid waste services will continue to be provided without an impact to the General Fund. The slight increase proposed will slightly increase the franchise fee dedicated to the City's General Fund.

Inherent in the decision to extend the solid waste franchise is the decision not to open the franchise to bids from other providers when the current franchise expires in 2007. While it is possible that going out to bid could result in lower priced service, going out to bid could have the following complications:

- All bids received could be higher than the negotiated proposed rate;
- The City could receive worse customer service from a new provider. South Valley has a long history of providing good customer service in Morgan Hill and aims to please its customers. In 2004, and in every biennial survey that the City has conducted, over 90% of the City's customers ranked their solid waste management services as either "good" or "excellent;"

- A new provider might not be as good a corporate citizen as South Valley has been. South Valley has a long history of supporting community endeavors and is one of the community's best corporate citizens. A new provider, not based in the South County, could avoid participating in community events;
- The City could have an adversarial relationship with a new provider. The City enjoys an excellent working relationship with South Valley and the company is very responsive to the City's concerns;
- Changing garbage providers can be very divisive and disruptive in a community.

It is for the above reasons, combined with the fact that the rates proposed will remain the lowest in the County for unlimited garbage collection, that the Subcommittee recommends that the City Council approve the proposed new franchise agreement with South Valley Disposal and Recycling.

Signed:

Chairperson Mark Grzan

Committeemember Dennis Kennedy

Summary of Solid Waste Program Changes

Additional Services Provided to the Community

- Food waste collection added to yard trimmings program
- Yard waste collected every week
- Add plastic bags, scrap metal, and household batteries to recycling program
- Provide each resident with a 48 gallon garbage cart
- Change “standard” recycling container offering to two 64-gallon carts instead of one cart and one blue bin – while continuing to offer optional bins and 32-gallon carts
- New smaller yard waste containers to be available and offered
- Need for cardboard tying eliminated
- Residential routes start 30 minutes later
- South Valley to provide residents with all extra bins – currently the City purchases these
- Elimination of hillside charges to all residents except Holiday Lake Estates (Note: this change must be adopted regardless of program changes due to the findings of the recent performance audit.)
- Convert “Recycle Days” event into enhanced coupon system
- Provide e-waste recycling opportunities
- Eliminate Freon charges for items brought to Transfer Station with vouchers – currently the City pays for this
- Provide sweeping service to City-owned parking lots

Compensation Provided to South Valley

- Franchise extended seven years
- Franchise fee lowered to 15.5%
- 1.46% rate increase on all customers (\$0.31 per month per home) for new services
- .58% rate increase on residential customers (\$0.12) to compensate for loss of revenue associated with the reduction in the number of hillside customers (this is mandatory regardless of program changes)
- \$1.25% CPI increase, which was supposed to start in July, has been delayed until October
- \$20,000 annually transferred from Environmental Programs Fund to South Valley for three years to pay for truck retrofits required for air quality reasons. This eliminates the need to raise rates by an additional .34% and avoids the potential for future compounding of this reimbursement.

AMENDED AND RESTATED FRANCHISE AGREEMENT

THIS AGREEMENT, dated _____ is entered into by and between the CITY OF MORGAN HILL, a Municipal Corporation ("CITY") and SOUTH VALLEY DISPOSAL AND RECYCLING, INC. A California Corporation ("COMPANY").

RECITALS

This Agreement is entered into on the basis of the followings facts, understandings, and intentions of the parties:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 49100, et seq.; hereinafter the "Act") established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices; and

B. The Act authorizes and requires local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

C. The City Council has enacted Chapter 13 of the Morgan Hill Municipal Code, which establishes standards for the Collection and removal of Solid Waste and Recyclables, the Disposal of Solid Waste, the Recycling of Recyclables, and requirements for Collection Agreements; and

D. Pursuant to Sections 49300 and 49500-49523 of the Act, CITY is authorized to enter into an exclusive agreement for the Collection and Disposal of Solid Waste; and

E. COMPANY and CITY desire to implement a new, expanded system of Solid Waste (including Green Waste/Food Waste) and Recyclables Collection in the City, to more efficiently provide for the Collection of such materials, and to facilitate achievement of City's obligations pursuant to the Act; and

F. Pursuant to this Agreement, CITY desires to engage COMPANY as an independent contractor to exclusively provide Solid Waste, Green Waste/Food Waste and Recyclables Collection Services in the City. COMPANY shall furnish all personnel, equipment, and supplies necessary to collect, or otherwise remove and dispose of all Solid Waste, Green Waste/Food Waste and Recyclables, as defined herein, generated or accumulated at all Residential and Commercial/Industrial Premises within the City, except as otherwise specifically provided herein; and

G. COMPANY has represented and warranted to CITY that it has the experience, responsibility, and qualifications to implement the Collection of Solid Waste and Recyclables, and to arrange with residents and other entities in the City for the Collection, safe transport,

Processing, and Disposal of all materials in compliance with Applicable Law and the provisions of this Agreement; and

H. CITY and COMPANY are mindful of the provisions of the laws governing the safe Collection, transport, Recycling, and Disposal of Solid Waste, including the Act, RCRA, and CERCLA; and

I. CITY and COMPANY desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, CITY is not thereby becoming a “generator” or “arranger” as those terms are used in the context of CERCLA Section 107 (a) (3), and that it is COMPANY, not CITY, which is “arranging for” the Collection of Solid Waste, Green Waste/Food Waste and Recyclables from Residential and Commercial/Industrial Premises in the City, and transporting of same for Disposal, Recycling of Recyclables, and Processing of Green Waste/Food Waste; and

J. As a material inducement to CITY entering into this Agreement, COMPANY has agreed to fully indemnify CITY against all claims, losses, lawsuits or actions relating to any Hazardous Waste at any place where COMPANY transfers, stores, processes, or disposes of Solid Waste, Green Waste/Food Waste or Recyclables pursuant to this Agreement, or its activities pursuant to this Agreement that result in a release of hazardous substances into the environment; and

K. As a further material inducement to CITY entering into this Agreement, COMPANY has agreed to fully indemnify CITY against all claims, losses, lawsuits or actions relating to any Hazardous Waste at Pacheco Pass Landfill and any other landfill utilized by the COMPANY to dispose of any wastes or materials collected under this franchise agreement, regardless of whether such claims, losses, lawsuits or actions relate to Solid Waste Collected from within the City and disposed of before or after the date of this Agreement; and

L. The parties previously entered into that certain Franchise Agreement dated June 6, 1984, as amended by that certain First Amendment dated February 7, 1990, that certain Second Amendment dated February 20, 1991, that certain Third Amendment dated June 17, 1992, that certain Fourth Amendment dated May 6, 1998, that certain Fifth Amendment dated December 2, 1998, that certain Sixth Amendment dated December 15, 1999, and that certain Seventh Amendment dated December 7, 2000 (as amended, the "Original Agreement"). The parties desire to amend and restate the Original Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to as follows:

Section 1. Franchise Grant

CITY grants to COMPANY, and COMPANY hereby accepts from CITY the exclusive right, franchise and privilege to collect and dispose of all solid waste matter produced, kept or accumulated in the City of Morgan Hill, together with the right and privilege to use and operate upon the CITY maintained streets and other rights-of-way to the extent necessary to perform COMPANY's obligations under this Franchise Agreement.

The right and privilege herein granted shall be subject to compliance with the provisions of CITY's ordinances pertaining to the accumulation, collection and removal of solid waste matter as they presently exist or as they may be amended during the term hereof, or any extension thereof, and any applicable State and Federal statutory or administrative laws and rules. For the purposes of this Agreement "solid waste matter" is defined to mean all putrescible and nonputrescible solid, semi-solid and liquid wastes and including recyclables with the following exceptions:

(A) Nonresidential recyclable materials source separated from other wastes by the waste generator that can be at least 95% recycled and for which the COMPANY cannot collect and recycle at a complete cost equal to or less than the complete cost charged by other vendors. "Complete cost" means all fees charged by a vendor to a nonresidential generator for recycling, hauling, or other services.

(B) Any materials for which there is no charge for the hauling, handling, or disposal or any other fee designed to compensate the vendor removing the materials.

This Agreement shall become effective on the date set forth in the introductory paragraph. Company accepts the terms of this Agreement as defining the scope of its exclusive rights to collect and dispose of solid waste matter produced, kept or accumulated in the City of Morgan Hill, and this Agreement supercedes all prior franchise rights and prior agreements, including but not limited to the Original Agreement. Company waives any right or claim to provide solid waste and recyclables collection services in the City under any prior grant of franchise, contract, license or permit, including but not limited to the Original Agreement, and any right under Section 49520, et seq. of the Public Resources Code. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Section 2. Franchise Term and Renewal

(A) The term of the Franchise shall be for a period of twenty-seven (27) years and one month, commencing at 12:01 a.m on the 1st day of January, 1988, and ending at 11:59 p.m on the 31st day of January, 2015, excepting as herein otherwise specified.

(B) During the eighth, twelfth, sixteenth, twentieth, and twenty-fourth years, respectively, of the term of this agreement, an audit of the performance of COMPANY (herein called the "Performance Audit") shall be conducted as set forth in subsection (C) of this Section 2.

- (i) If after the City Council of CITY has reviewed a particular Performance Audit and has considered any evidence presented by COMPANY in connection therewith, the council determines to its satisfaction that all covenants, provisions, terms and conditions of this Agreement on the part COMPANY to be performed, kept and observed, have not been fully and faithfully performed, kept and observed, then this Agreement may be terminated by CITY at its option and without prejudice to any other remedy to which it may be entitled to either at law, in equity, or under this Agreement by giving written notice of termination either by mail or personal service, to COMPANY not less than thirty (30) days prior to the date upon which the termination is to become effective. This right of termination shall be in addition to the right of CITY to terminate this Agreement under the provisions of Section 20 hereof.
 - (ii) In connection with the review of a particular Performance Audit, CITY reserves the right to propose any amendment or amendments of this Agreement which the City Council of CITY determines to be necessary by reason of the findings or results of the Performance Audit to carry out the intent of the terms and conditions of this Agreement.
 - (iii) In conjunction with any Performance Audit, CITY reserves the right to require changes to COMPANY'S operations, which CITY determines to be necessary or appropriate by reason of the findings or results of the Performance Audit to carry out the intent of the terms and conditions of this Agreement. If the changes to the COMPANY'S operations require additional services to be provided, COMPANY and CITY shall mutually agree on the compensation to be provided to COMPANY.
- (C) The performance audit shall:
- (i) be performed by a qualified firm to be selected by CITY.
 - (ii) be totally paid for by COMPANY as part of its operating costs, and
 - (iii) address all appropriate areas including, but not limited to the following areas, and shall provide specific recommendations for improvement in each area, namely:
 - (a) Overall organizational structure and management systems and procedures.
 - (b) Efficiency of collection operations, including any analysis of routes, schedules and the impact of franchise requirements.
 - (c) Staffing practices, including the deployment of management and supervisory personnel.

- (d) Financial management practices, including the COMPANY'S billing and collection system and it's policies with regard to uncollected accounts.
- (e) Personnel management practices, including compensation policies and the resolution of employee grievances.
- (f) Procedures for receiving and resolving customer complaints and concerns, including damage to customer-owner containers and disappearance of container covers.
- (g) Procedures for the acquisition, maintenance and replacement of equipment; types of equipment; rationale for recent capital investments; and financing options.
- (h) Utilization and management of facilities.

Section 3. Franchise Fee

CITY shall be paid and retain a franchise fee of fifteen and one-half percent (15.5%) of all revenues received by the COMPANY for services provided by the COMPANY in the CITY. These revenues shall include, but shall not be limited to, fees received from customers for regularly scheduled commercial or residential services, fees for "on-call" services, and all other revenues received by the COMPANY resulting from the COMPANY's provision of services within the CITY, but excluding revenues received from the sale of recyclable commodities.

Quarterly franchise fee payments must be computed and paid by COMPANY to CITY's Finance Department on or before April 30, July 31, October 31, and January 31 for the prior calendar quarter.

If any franchise fee payment, or recomputed amount, is not made on or before the due dates specified above, COMPANY must pay as additional compensation, an interest charge, computed from the applicable due date, at an annual rate equal to the prevailing commercial prime interest rate in effect on the due date, plus one percent (1%).

In addition to any late payment made in accordance with above paragraph, if a payment is overdue by sixty (60) days or more, COMPANY will pay to CITY a sum of money equal to five percent (5%) of the amount due in order to defray additional costs and expenses incurred by CITY as a consequence of that delinquent payment.

No acceptance of any payment by CITY may be construed as an accord that the amount is in fact the correct amount, nor may acceptance of payment be construed as a release of any claim CITY may have against COMPANY for any additional sums payable under the provisions of this

Agreement.

All amounts paid are subject to independent audit and recomputation by CITY. If, after audit, such recomputation indicates a franchise fee underpayment, COMPANY shall pay to CITY the amount of the underpayment within twenty (20) days of receipt of written notice from CITY that such is the case. If, after audit, any recomputation indicates a franchise fee underpayment of more than three percent (3%), COMPANY must also reimburse CITY, within twenty (20) days of written notification, for all reasonable costs and expenses incurred in connection with that audit and recomputation.

The COMPANY shall bill all customers on a monthly, bimonthly, or quarterly basis. Customer bills shall be on a format approved by the CITY and must be clear, concise, and understandable. Bills also must clearly delineate all activity during the billing period, including optional charges, rebates, and credits. All bills shall only contain charges and rates that have been approved by the CITY for services performed under this contract.

COMPANY may charge customers who have not paid their bill on time a late fee equal to one and one-half percent (1.5%) per month of the bill amount. CITY may establish a property lien process to further encourage customers to pay past-due amounts.

The first billing to a customer after the start of service or a change of service shall be prorated based upon when the new or changed service commenced. Customers shall not be charged a late fee or otherwise penalized for any failure by the COMPANY, including the failure to timely or correctly bill the customer.

In case of a billing dispute, the COMPANY shall respond in writing to a written complaint from a customer within thirty (30) days.

The COMPANY shall provide credits or refunds to customers who have been missed upon request provided that: (A) the customer notifies the COMPANY by the end of the next business day; and (B) the COMPANY is unable to provide collection within two (2) days after notification. For each event that service has been missed, the credit shall equal a pro-rata share of the billing for one full week. All credits for service must be issued no later than the customer's next billing cycle following the determination that a credit is warranted. For customers terminating service, refunds shall be issued promptly, but no later than thirty (30) days.

The COMPANY shall enter into good faith negotiations with the owners or managers of mobile home parks and other commonly-billed developments to develop an equitable billing and monitoring system.

Section 4. Franchise Services

(A) COMPANY shall furnish the personnel, labor and equipment required for the

collection, removal, handling, transfer, processing, marketing and disposal of all solid waste matter, recyclables, and compostable materials generated within the corporate limits of the City of Morgan Hill and to sweep all public streets as designated in Exhibit B in accordance with the terms set forth in this Agreement. COMPANY shall also provide equipment, vehicles, personnel and supervision for the curbside collection of recyclable materials and yard trimmings to all single-family units and multi-family units receiving residential refuse collection and disposal service in Morgan Hill and for the collection of recyclable materials from business establishments receiving refuse collection and disposal service in Morgan Hill. COMPANY shall collect all recyclable materials and yard trimmings placed in appropriate recycling containers including:

- i. Newspaper
- ii. Metal Cans - aluminum and ferrous cans
- iii. Glass Jars and Bottles
- iv. Plastic Containers - all plastic containers, bags, and packing materials
- v. Used Motor Oil & Filters - only if placed in a COMPANY-provided, sealed, oil container or COMPANY-provided oil filter bag.
- vi. Household Batteries – contained in zippered plastic bags provided by the customer and placed on top of recycling cart
- vii. Scrap Metal
- viii. Organic Materials - organic materials including grass clippings, cuttings, leaves, Christmas trees, food waste, food contaminated paper waste, and other organic materials mutually acceptable to the COMPANY and CITY. Organic materials shall be placed by the customer in a COMPANY-provided or CITY-provided container or thirty-two-gallon (32-gallon) container or tied in bundles no greater than three (3) feet in length and two (2) feet in diameter. Seven (7) additional thirty-two gallon (32-gallon) containers or bundles in addition to the COMPANY-provided or CITY-provided containers shall constitute the maximum amount the COMPANY is obligated to pick-up at one stop. Residents that have the need to dispose of more than seven (7) additional thirty-two gallon (32-gallon) containers or bundles shall be allowed to do so upon request to COMPANY provided that the request is made twenty-four (24) hours or more in advance of their regularly-scheduled yard trimmings collection. Upon request from a resident, COMPANY will send a representative to a home to verify that excess organic material generated was not generated by a professional landscaper and has been generated from that resident's home. At the discretion of the company, or by direction of CITY, COMPANY will provide the resident a voucher(s) sufficient to dispose of material at the San Martin Transfer Station or a different facility owned by COMPANY. Upon

delivery to the San Martin Transfer Station or different facility owned by COMPANY, resident must provide said voucher and proof of residency to where voucher was issued.

ix. Mixed Paper - including all types of paper (mail, magazines, catalogs, paperboard boxes, envelopes, advertisements, books without hardbound covers, and phone books)

x. Cardboard - corrugated cardboard placed alongside COMPANY-provided containers in a contained or manageable manner in residential areas and placed in COMPANY-provided containers in commercial or industrial areas.

xi. Aseptic Containers

xii. Other Items - items mutually acceptable to the COMPANY and CITY.

The COMPANY shall not be required to collect, and may leave on the curbside, any load which is contaminated by or mixed with hazardous waste, substantially contaminated by or mixed with nonrecyclable materials, or is in such a quantity as to indicate that it was not generated by the average reasonable residential use of the property. COMPANY shall leave notice with the load explaining why it was not collected.

Upon request, the COMPANY shall enter into good faith negotiations with the owners or managers of mobile home parks and other commonly-billed developments to institute a recycling collection system that addresses the special needs of these properties. This provision is not intended, however, to require the COMPANY to use specialized equipment or containers at these properties, absent agreement with the mobile home parks or other commonly-billed developments to do so.

(B) COMPANY also agrees, as a part of the consideration for the awarding to it of the right, franchise and privilege for collecting garbage in the City of Morgan Hill, to collect for CITY, without any charge, refuse from all CITY premises, buildings and installations, including but not limited to the City Parks, City garbage cans, if any, along City streets, municipal buildings, and the City Hall building. All recyclable and compostable material collected from CITY premises will be diverted from the landfill if it is reasonably source separated from waste materials. CITY staff and contractors serving CITY facilities may haul and deposit waste, recyclables or compostables generated in the course of routine CITY business (this would not include demolition of buildings or large construction projects) directly to any Transfer Station owned by COMPANY or another corporation affiliated with COMPANY without any charge for as long as the Transfer Station is owned by COMPANY, its current parent corporation, or its successor or assignee. COMPANY also agrees to provide weekly parking lot sweeping services at all CITY premises, buildings, city-owned parking lots, and installations.

(C) Collection of solid waste matter shall be at the curbside of the customer's property unless arrangements are made with COMPANY by the customer for a sideyard or backyard pickup and payment of the additional rate for sideyard or backyard pickups.

(D) COMPANY may provide additional services upon request of CITY subject to the establishment of a rate therefor. Provided, however, if COMPANY elects not to provide a proposed new service and so notifies CITY in writing, CITY retains the right to perform the proposed new service itself or to contract with another business entity to provide it.

(E) COMPANY shall provide unlimited pickup service for residences and shall provide vouchers for community clean-up purposes in a form acceptable to CITY twice per year. There shall be no charge to customers or CITY for items brought to the transfer station with a voucher providing the materials brought to the transfer station comply with the limitations established by the voucher. Upon sixty (60) days notice by CITY, COMPANY shall no longer provide unlimited pickup service for residences and a volume-based ("per container") system shall be implemented immediately. If a volume-based system is implemented, COMPANY shall make vouchers (commonly referred to as "extra can stickers") for the temporary expansion of solid waste matter collection service beyond the service level subscribed to by each customer available at two or more locations within the City of Morgan Hill and through the mail. One of these locations must be open a minimum of two (2) hours after 6 p.m. at least one evening per week and four (4) hours on Saturday or Sunday. COMPANY shall provide all residential customers with one (1) free voucher per year as an insert in a bill.

(F) COMPANY shall provide regular, schedule collection service for refuse and organic materials on a citywide basis in all residential areas at least once per week, or oftener, as arranged for by the customer and within all nonresidential areas in accordance with the frequency of pickup specified for the particular service in the Schedule of Rates. Residential collection of recyclables shall be performed on a biweekly (once every two weeks) basis and will occur on the same day as regular refuse collection service. COMPANY shall provide a calendar to all residential customers by December 1 of each year indicating the biweekly collection schedule and street sweeping schedule affecting their residence during the following year. Collection from businesses shall be performed on a weekly schedule as arranged by the COMPANY with the participating businesses.

(G) COMPANY shall not alter or adjust collection schedules or routes without providing prior notice of at least (14) days to all service addresses, and any schedule modification shall not result in reduced service frequency to any customer. COMPANY shall collect and remove from any and all premises, within twenty-four (24) hours after demand, notice or request, any and all solid waste matter which COMPANY shall have failed to collect and remove as required at the regular schedule time.

(H) CITY and COMPANY shall mutually agree upon the routes, days and hours for the collection of solid waste matter. Routes serving residential areas shall not reach the first customer earlier than 6:30 a.m.. In residential areas, street sweeping shall occur every other week on the day after the normally-scheduled recycling collection day.

- (I) COMPANY shall comply with each of the following requirements:
- (i) All collection vehicles and equipment shall be modern and so constructed and maintained to prevent leakage, spillage and overflow. COMPANY shall maintain all vehicles, detachable containers and debris boxes in a clean and sanitary condition, and shall perform such maintenance as is necessary to assure that each vehicle and piece of equipment is capable of performing all functions for which it was designed. COMPANY shall maintain an equipment replacement schedule to be provided to CITY upon its request.
 - (a) All trucks and equipment shall be clearly identified with COMPANY name, a current local business telephone number, and a vehicle identification number in letters not less than two and one-half (2-1/2) inches in height.
 - (b) CITY may refuse to permit the operation within the City limits of any vehicle not adequately serviced, cleaned or in need of repair. Removal of vehicles for servicing and repair shall not relieve the COMPANY from maintaining all collection schedules.
 - (ii) COMPANY shall not litter premises in the process of making collections nor allow refuse to blow or fall from any vehicles used for collections. COMPANY shall replace lids or covers on containers immediately after emptying the same and shall repair or replace at its expense any containers damaged as a result of its handling thereof, normal wear and tear excepted. COMPANY shall clean up all spills including oil and debris on the streets resulting from its operation.
 - (iii) COMPANY shall establish and maintain an office where complaints may be made. Such office shall have a responsible individual available daily between the hours of eight o'clock a.m. and five o'clock p.m., excepting Saturday, Sunday and such holidays as are recognized by COMPANY and approved by CITY. Calls for missed garbage shall be received twenty-four (24) hours per day.
 - (iv) CITY agrees to require all customers to place their garbage, refuse and rubbish in metal or plastic side containers, plastic bags, or wheeled carts provided by the COMPANY. No container provided by the customer shall exceed 32 gallons in size and 70 pounds in weight when full, and COMPANY shall not be required to pick up materials that are not placed in containers as above specified.. COMPANY shall provide all residential customers with one 48 gallon wheeled cart for garbage collection at no additional charge.
 - (v) COMPANY shall provide residents with appropriate recycling containers reasonably acceptable to CITY for the collection of recyclable materials. At all times the containers shall be the property of the COMPANY. CITY and COMPANY agree that all curbside containers provided by the CITY prior to the effective date of this

AGREEMENT shall be the property of the COMPANY. COMPANY shall make a reasonable effort to maintain or replace damaged or lost recycling containers and to ensure that new customers are provided recycling containers within one week of commencing service.

COMPANY shall offer residents their choice of containers including bins, 32-gallon carts and 64-gallon carts for recyclables, 64-gallon and 96-gallon carts for organic materials, and food waste collection receptacles. Residents that do not set out yard trimmings will also be offered a 32-gallon cart for organic materials. The initial mix of containers offered to residents by the COMPANY shall include two carts for recycling and one cart for organic materials. CITY shall provide COMPANY with a supply of food waste collection receptacles. COMPANY shall assist customers in locking organic collection containers upon request.

COMPANY shall provide additional containers to any resident requesting additional containers for recycling or yard trimmings collection service provided the request is consistent with the amount of recyclable materials potentially generated at the residence.

COMPANY shall provide businesses with recycling containers adequately sized to contain cardboard for recycling and reasonably acceptable to CITY for the collection of recyclable materials. At all times the containers shall be the property of the COMPANY.

- (vi) COMPANY shall replace all garbage, rubbish, recycling, and organic materials containers used by its customers in an upright position, recovered, in approximately the same location where the containers were immediately before COMPANY emptied them. COMPANY shall return all commercial bins to the location where the containers were immediately before COMPANY emptied them, within any enclosures provided and shall close any doors or gates provided for screening the bins. COMPANY shall instruct its employees to comply with the foregoing requirements, and shall exercise sufficient supervision of its employees to assure that these instructions are followed.
- (vii) COMPANY shall not collect yard trimmings (organic materials including grass clippings, cuttings, leaves, Christmas trees and other yard trimmings) during the collection of residential garbage unless the yard trimmings are not reasonably visible to the COMPANY employee. COMPANY shall not collect corrugated cardboard during the collection of residential garbage unless the cardboard is not reasonably visible to the COMPANY employee. If, in the process of emptying a garbage container, yard trimmings or cardboard become visible to a COMPANY employee, said employee shall stop emptying that container. COMPANY employees shall leave a CITY-approved explanatory notice on all garbage containers not emptied because they contained yard trimmings or cardboard. If a customer requests that the

COMPANY return to an address to collect garbage that has had yard trimmings or cardboard removed from it and is now collectable, COMPANY shall return within 24 hours after the customer has agreed to pay the extra collection fee contained in Exhibit A, Schedule of Rates.

- (viii) COMPANY shall be responsible for transporting recyclable materials to a processing facility.
- (ix) COMPANY will make reasonable efforts to ensure that all recyclable materials are not disposed of in landfills. COMPANY and CITY will mutually agree upon the final disposition of recyclable materials that are not economically feasible to market prior to disposal. A material is deemed economically feasible to recycle if the tipping fee to recycle the material at a processing facility within fifty miles of the City is less than the tipping fee to dispose of it.
- (x) When recyclables are not collected from any customer for any reason including the presence or suspected presence of hazardous waste or contaminants, COMPANY shall notify its customer in writing why the collection was not made. COMPANY has represented to CITY that COMPANY will carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substance Control and Local Emergency Response Providers, and if appropriate, the National Response Center, of reportable quantities of hazardous waste, found or observed in solid waste anywhere within the CITY, including on, in, under or about CITY property, including streets, easements, rights of way and city waste containers. In addition to other required notifications, if COMPANY observes any substance which it or its employees reasonably believe or suspect to contain hazardous waste unlawfully disposed of or released on CITY property, including streets, storm drains, or public right of way, COMPANY also will immediately notify the City Manager, or the City Manager's designee.
- (xi) COMPANY shall satisfactorily provide comprehensive customer service for waste diversion programs, including but not limited to responding to complaints, answering questions and handling missed pick-ups. Missed pick-ups shall be collected within twenty-four (24) hours of being reported. A record of customer complaints and disposition shall be maintained by COMPANY and made available to CITY at CITY's request.
- (xii) COMPANY shall provide, at CITY's request, reasonable assistance in conducting the public awareness/education program. Such assistance may include, but is not limited to: 1) providing assistance in developing educational and promotional programs and materials; 2) distributing educational and promotional materials; 3) providing recycling vehicle(s) and personnel for appearances at special events such as parades, fairs, etc; and 4) distributing an annual calendar for recycling collection, yard trimmings collection, and street sweeping.

- (xiii) Within thirty (30) days after the end of each month, COMPANY shall submit to CITY written monthly reports, in a format reasonably acceptable to the CITY, that provide the following information:
 - a. Collected Tonnages - a monthly summary of the quantity, by weight, of each recyclable material collected.
 - b. Participation Rates - a monthly reasonably estimated summary of the total number of households served per route, the actual number of households participating, the number of pickups per route, the percentage of pickups by route, and the number of businesses participating in the cardboard recycling program.
 - c. Recycling Revenues - a monthly summary of the total dollar amount received for each category of recyclable materials sold.
- (xiv) Equipment Maintenance - COMPANY shall maintain all equipment in a clean condition and in good repair at all times. All parts and systems of the equipment shall operate properly and be maintained in a condition satisfactory to CITY. COMPANY shall repaint all equipment on a frequency necessary to maintain a positive public image as reasonably determined by the CITY.
- (xv) Garbage and recycling bins and carts shall be delivered to the customer within five (5) working days of the request for service by the customer.
- (xvi) Care shall be taken by the COMPANY's employees to prevent damage to bins and carts by unnecessary rough handling. Bins and carts damaged by the COMPANY's employees shall be replaced by the COMPANY, at COMPANY's sole expense, within five (5) working days of the request by the customer or by the CITY.
- (xvii) Change in bin size. COMPANY shall within five (5) working days of request by customer, exchange bins for a larger or smaller size bin. Customer may request a change in bin size twice a year at no additional charge. Additional bin exchanges shall be subject to a handling fee.
- (xviii) Bin Cleaning. COMPANY shall within five (5) working days of request by customer, exchange bins to provide a clean bin. Customer may request a clean bin once a year at no additional charge. Additional bin exchanges shall be subject to a handling fee.

Section 5. Franchise Representative and Inspections

- (A) COMPANY shall assign a qualified person to be in charge of its operations in the

CITY, and shall inform CITY of such person's identity and experience. It shall be such person's responsibility to assure that all collection operations are effectively performed and all complaints courteously handled and satisfactorily resolved.

(B) To ensure that the laws governing the performance of this Agreement are complied with, a representative of CITY may inspect, review and observe the operations of COMPANY during the term of this Agreement without prior notice. At CITY's request, COMPANY shall make designated personnel available to accompany CITY inspectors provided a minimum of twenty-four (24) hours notice has been given to COMPANY by CITY.

Section 6. Franchise Collection Rates

(A) COMPANY shall not charge any amount in excess of the approved schedule of service rates for any services required or permitted to be performed by the terms of this Agreement. The approved service rates are those set forth in Exhibit A attached hereto and incorporated herein by reference, or as such Schedule of Rates may hereafter be amended by resolution of the City Council.

(B) COMPANY shall submit a request for an adjustment of service rates no later than March 1 of any given year if an adjustment is desired by the COMPANY. Any approved change in service rates shall become effective on July 1 of the same calendar year. For purposes of adjustment, the base rates shall be the rates in effect on January 1, in the calendar year the adjustment is made. The adjustment request shall be the percentage increase equal to eighty percent (80%) of the net percentage change in the Consumer Price Index (CPI), all Urban Consumers (all items) for the San Francisco/Oakland Metropolitan Area. The indices used shall be those published by the United States Department of Labor, Bureau of Labor Statistics. All net percentage changes shall be calculated by the following formula:

$$\text{Net Percentage Change} = \frac{V(I) - V(I-1)}{V(I-1)}$$

Where: $V(I)$ = Index value as of November of the year preceding the adjustment year; and

$V(I-1)$ = Index value for the November of the second preceding year.

In addition to the adjustment provided for herein based upon the CPI, the parties agree to adjust the service rates based upon any extraordinary changes in circumstances that materially increase the COMPANY's costs of providing service hereunder that are substantially beyond the control of the COMPANY (including, without limitation, revisions to laws, ordinances, or regulations, or the interpretation or enforcement thereof). The parties furthermore agree to adjust the service rates to compensate for the following:

- (i) If a volume-based system is implemented, changes in the actual resident subscription

rate for each can level that differ from the formula (80%-one can, 15%-two cans, and 5%-three cans) used to set the base rate for 1999; and

- (ii) Changes in the franchise fee

The COMPANY shall include the following information in a request for an adjustment of service rates at a minimum:

- (i) The index values of V(I) and V(I-1);
- (ii) The net percentage change as calculated by the formula above;
- (iii) The percentage change equal to eighty percent (80%) of the net percentage change in the Consumer Price Index (CPI);
- (iv) The actual resident subscription rate for each can level if a volume-based system is implemented; and
- (v) COMPANY's proposed new service rates

Upon receipt of an accurate and correctly calculated request for an adjustment of service rates, CITY shall determine the new service rates to be billed to customers and shall notify COMPANY of such service rates on or before May 1 of the year the adjustment is made.

Should the index named in this section not be published in November of any given year, the calculations shall be performed using the index values of the October immediately preceding the November contemplated by this Amendment.

(C) COMPANY agrees to provide eligible low-income residents with a 20% discount for residential service provided that:

- (i) The resident applying for the discount can prove that they are eligible to receive the "lifeline" discount rate offered by Pacific, Gas & Electric. In the event that this utility discount is no longer offered, the COMPANY and the CITY shall meet to agree upon a replacement measure of eligibility; and
- (ii) The resident subscribes to single-can service if a volume-based system is implemented.

(D) Upon request of COMPANY, CITY agrees to make one-time payments of \$20,000 to COMPANY in September 2005, September 2006, and September 2007 to assist COMPANY in reducing air pollution in the City and eliminate the need to temporarily include such payments in the customer rate base.

Section 7. Company Providing Criteria to Review Development Plans.

If requested by CITY, the COMPANY shall provide CITY with examples of specific criteria by which development plans for residential and nonresidential units may be reviewed by CITY concerning the location of refuse containers and appropriate screening thereof, which criteria CITY may choose to utilize in the review of development plans.

Section 8. Franchise Service Termination.

Company may terminate service to residential customers who are one hundred twenty (120) days in arrears in payment of rate charges and nonresidential customers who are sixty (60) days in arrears in payment of rate charges, respectively, provided COMPANY:

- (A) Shall give a customer whose service may be cut off at least (30) days written notice prior to the proposed service termination date.
- (B) Shall notify CITY in advance of each proposed service termination by property location.
- (C) Shall monitor each property location at which service has been terminated and notify CITY of any problems observed, including accumulation of garbage on the premises.
- (D) Shall promptly restore service when the rate charges owing have been paid.

Provided, however, CITY reserves the right and discretion unilaterally to withdraw COMPANY's privilege of terminating service for nonpayment of rate charges by giving COMPANY at least (30) days written notice prior to the suspension of this privilege and holding one (1) meeting with COMPANY concerning withdrawal of the privilege. No amendment of this Agreement shall be required. If this privilege is withdrawn, COMPANY shall be entitled to do each of the following:

- (i) Include bad debt as part of its rate base, but limited to one (1) percent of its annual gross revenues; provided, however, if COMPANY demonstrates a good faith effort in its attempts to collect bad debts to the satisfaction of CITY, then CITY may allow inclusion of bad debts as part of the rate base in a specified amount beyond one (1) percent of annual gross revenue; and
- (ii) Require a deposit for new customers and for re-starts of service.

Section 9. Franchise Insolvency or Bankruptcy

If the COMPANY shall at any time during the term of this Agreement or any extension thereof, become insolvent, or if proceedings in bankruptcy shall be instituted by or against

COMPANY, or if COMPANY shall be adjudged bankrupt or insolvent by any Court, or if a receiver or trustee in bankruptcy or a receiver of any property of COMPANY shall be appointed in any suit or proceeding brought by or against the COMPANY, or if COMPANY shall make an assignment for the benefit of creditors, then and in each and every such case, this Agreement shall immediately cease and come to an end, and the rights and privileges granted in this Agreement shall immediately be canceled and annulled without notice or action required on behalf of CITY.

Section 10. Franchise Disaster Assistance

(A) In the event a wartime, natural, physical or other disaster in or proximate to the CITY limits resulting in the declaration of a State of Emergency by the duly authorized authority or City Council, COMPANY shall make available to CITY at no cost to CITY, all trucks, equipment and personnel normally performing services under this Agreement, for emergency operations conducted or directed by the CITY emergency organization.

(B) CITY shall have the right to take possession of all such equipment provided by COMPANY, and to temporarily employ all COMPANY personnel so provided as emergency operation forces of CITY, under the direction and control of the CITY disaster operation chief.

(C) COMPANY shall make available, in addition to the equipment and personnel above, equipment and personnel from those COMPANY operations and resources not serving CITY, to the extent necessary to conduct effective refuse, waste and debris removal during any declared State of Emergency to the specifications of the Disaster Operations Chief.

(D) CITY shall not be required to compensate COMPANY in any manner or form for COMPANY provision of vehicles, personnel or equipment normally performing services under this Agreement within the CITY limits, when made available during a declared State of Emergency. When additional vehicles, personnel hours or equipment are provided during an emergency, CITY shall compensate COMPANY for actual expenses incurred by COMPANY in providing additional vehicles, personnel hours or equipment upon submission by COMPANY to CITY of detailed records of costs and expenses actually borne by COMPANY, and upon approval by the Federal government of CITY's reimbursement of expenses incurred by COMPANY during a disaster.

Section 11. Franchise Indemnification

(A). Indemnification of CITY. COMPANY agrees that it shall protect, defend with counsel reasonably acceptable to CITY, indemnify and hold harmless CITY, its officers, employees, and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorney's fees, arising out of or resulting in any way from CITY's grant of this franchise to COMPANY or COMPANY's exercise of the franchise, unless such claim is due to the negligence or willful acts of the CITY, its officers, employees, agents, contractors or volunteers. Upon demand of the CITY, made by and through the City Attorney, COMPANY shall appear in and defend the CITY and its officers, employees, and agents, in any claims or actions, whether judicial, administrative or otherwise which are within the scope of the foregoing indemnity. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE AND RECYCLABLES COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

(B) Household Hazardous Substance Indemnification. COMPANY shall indemnify, defend with counsel reasonably acceptable to CITY, protect and hold harmless CITY, its officers, employees, agents, volunteers, assigns and any successor or successors to CITY's interest from and against all claims, actual damages (including special and consequential damages but excluding punitive damages), natural resources damage, injuries, cost, response, remediation and removal costs, losses, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, CITY or its officers, employees, or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or hazardous wastes at any place where COMPANY processes or stores material for recycling pursuant to this Third Amendment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify CITY from liability. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH SOLID WASTE AND RECYCLABLES COLLECTION, PROCESSING AND DISPOSAL SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

(C) AB 939 Indemnification. COMPANY agrees to protect, defend, with counsel reasonably acceptable to CITY, and indemnify CITY against fines or penalties imposed by the California Integrated Waste Management Board in the event that the CITY fails to meet its AB 939 waste reduction goals due to the COMPANY's failure to satisfactorily fulfill its obligations pursuant to this Amendment.

Section 12. Franchise Insurance and Bond.

(A) This Agreement and the privileges herein granted to COMPANY is and are conditioned upon the faithful performance by COMPANY and by each and every one of his subcontractors, if any, of each and all of the covenants and provisions herein agreed to be performed by COMPANY or required to be performed by its subcontractors; and payment of all license fees and other monies herein agreed to be paid by COMPANY.

(B) Upon execution of this Agreement, COMPANY shall furnish to CITY and shall file with the City Clerk of CITY a corporate surety bond, approved by the Chief Administrative Officer and approved as to form by the City Attorney executed by COMPANY as principal and by a corporate surety as surety, in the sum of \$1,000,000 (One Million Dollars), conditioned upon the faithful performance by COMPANY and its subcontractors, if any, of this Agreement.

(C) COMPANY agrees maintain and submit evidence to CITY of, during the life of this Agreement, insurance policies as specified in Exhibit B, Insurance Requirements:

COMPANY further agrees to hold CITY harmless from any damage or claims for damage arising out of the operations of COMPANY in carrying out the provisions of this Agreement or because of nonperformance by it of any obligation placed upon it by this Agreement.

Evidence of insurance shall be in the form of an ACORD form Certificate of Insurance and original endorsements to policies each naming the CITY and its officers, employees and agents as additional insureds on all policies. In the event of cancellation of any coverage, thirty (30) days prior written notice of termination shall be given to the CITY. Notice shall be sent to:

City Manger
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, California 95037

Section 13. Franchise Assignment

(A) COMPANY shall not assign, sell, subcontract or otherwise delegate authority to perform any portion of this Agreement, including but not limited to a sale, exchange or other transfer of substantially all of COMPANY's assets dedicated to service under this Agreement to a third party, or between a subsidiary and a parent company or Related Party, without the prior written express approval of CITY. In the event of any assignment duly authorized by CITY, the assignee shall assume the liability of COMPANY.

(B) No sale, gift, or transfer of stock or other interest of COMPANY, including but not limited to any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which COMPANY or any of its shareholders is a party, which would result in a change of Control of

COMPANY, shall be made without prior written approval of the City Council. Violation of this provision shall be a breach of this Agreement and grounds for termination by CITY without the need for compliance with the notification requirements of Section 20.

(C) If COMPANY shall at any time during the Term become insolvent, or if proceedings in bankruptcy shall be instituted by or against COMPANY, or if COMPANY shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of COMPANY shall be appointed in any suit or proceeding brought by or against COMPANY, or if COMPANY shall make an assignment for the benefit of creditors, then and in each and every such case, this Agreement shall immediately cease, terminate, and be canceled upon written notice by CITY and without the necessity of suit or other proceeding.

(D) If COMPANY requests CITY's consideration of and consent to an assignment, CITY may deny or approve such request in its complete discretion. CITY need not consider any request by COMPANY for consent to an assignment unless and until COMPANY has met the following requirements:

- (i) COMPANY shall pay to CITY the transfer fee described in Section 13(E).
- (ii) COMPANY shall furnish CITY with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.
- (iii) COMPANY shall furnish CITY with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Collection Services, including: (a) that the proposed assignee has at least 10 years of experience in the provision and management of Solid Waste and Recyclables Collection Services on a scale equal to or exceeding the scale of operations conducted by COMPANY under this Agreement; (b) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any State, federal or local agencies and the assignee has provided CITY with a complete list of such citations and censures; (c) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (d) the proposed assignee conducts its Solid Waste and Recyclables Collection Services in accordance with sound Solid Waste and Recyclables practices, and in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste including hazardous substances; and (e) any other information required by CITY to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(E) Any application for an assignment transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in the amount of Ten Thousand Dollars (\$10,000) to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse CITY for all direct and indirect expenses. In addition, COMPANY shall reimburse CITY for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. COMPANY shall pay such bills within (30) days of receipt. The transfer fees are over and above any COMPANY Fees specified in this Agreement.

(F) If CITY consents to an assignment, COMPANY shall cooperate with CITY and the assignee to assist in an orderly transition.

Section 14. Franchise Waste

It is expressly understood that all Solid Waste and Recyclables collected under this Agreement becomes the property of COMPANY at the point in time it is loaded onto COMPANY'S vehicle, subject to the requirement of delivery of solid waste to a disposal site, recyclables to a recycling facility, and organic waste to a organic waste facility. At no time does CITY obtain any right of ownership or possession of solid waste or recyclables placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that CITY has any such rights. CITY and COMPANY agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is COMPANY, and not CITY that is to be considered the "merchant" of goods recycled pursuant to this AGREEMENT.

COMPANY shall ensure that all disposal, transfer, recycling, and organic waste processing facilities used by the COMPANY are properly permitted and in compliance with Applicable Law at all times during the Term. COMPANY shall immediately inform the City Manager in writing in the event of any noncompliance, and CITY, in its sole discretion, shall have the right to require the use of a different facility, to be selected by COMPANY. The City Council may also, in its sole discretion, require the use of a different site at any time during the Term if a facility (as the case may be) is found to not be in compliance with the provisions of this Section, and the City Council determines that the facility (as the case may be) is not acceptable due to a failure to comply with the terms of this Agreement or a finding by State or federal regulatory agencies that it is not in compliance with Applicable Law, including the Environmental Statutes, and is unable to accept City's Solid Waste, Organic Waste or Recyclables (as the case may be). Under no circumstances, however, shall a change in one or more of the facilities pursuant to this subsection provide a basis for an increase in the Rates.

COMPANY's arrangements with its customers will provide that, subject to the right of the customers to claim lost property, title and the right to possession, and liability for all recyclables which are set out for collection on the regularly scheduled collection day shall pass to COMPANY at the time they are placed in the COMPANY's truck. The COMPANY shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the recyclables which it collects. At no time does the CITY obtain any right of ownership or possession of recyclables placed for collection, and nothing in this Amendment shall be construed as giving rise to any inference that CITY has any such rights. COMPANY will utilize their best efforts to implement and maintain waste recovery or recycling programs. COMPANY shall have the first right and option and right of first refusal for the recycling of any type of material within the CITY subject to applicable laws. However, if COMPANY chooses not to recycle a type of material which CITY deems recyclable, CITY may, at its option, cause or implement independent recycling programs to handle said waste.

Section 15. Franchise Waiver

The waiver by CITY of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by CITY of any franchise or other fee or of any other monies which may become due hereunder to CITY shall not be deemed to be a waiver of any preceding breach or violation by COMPANY of any term, covenant or condition of this Agreement or of any applicable law or ordinance.

Section 16. Franchise Administration

The administration and enforcement of this Agreement shall be the responsibility of the City Manager or designated representatives of that office.

Section 17. Franchise Independent Contractor Status

It is agreed that COMPANY is an independent contractor, and all persons working for or under the direction of the COMPANY are the COMPANY's agents, servants, employees, and said persons shall not be deemed agents, servants or employees of CITY.

Section 18. Franchise Notice

Except as provided in Section 19, all notices shall be personally delivered or mailed, via first class mail to the below listed addresses. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of COMPANY is as follows:

SOUTH VALLEY DISPOSAL AND RECYCLING, INC.
1351 Pacheco Pass Highway
Gilroy, CA 95020

Address of CITY is as follows:

City Manager	with a copy to:
City of Morgan Hill	City Clerk
17555 Peak Ave.	17555 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

Section 19. Continuity of Services

None of the following are to be considered an excuse from performance, and COMPANY shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events: (a) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost of fuel, commodities, supplies or equipment; (b) changes in the financial condition of COMPANY or any of its subcontractors affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by COMPANY, or any subcontractor; (d) failure of any subcontractor or supplier to furnish labor, materials, service or equipment; (e) equipment failure; (f) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclables; (g) the availability of any Disposal site or Processing facility; (h) labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by COMPANY's, employees or directed at COMPANY, or a subcontractor. In the case of labor unrest or job action directed at a third party over whom COMPANY has no control, however, the inability of COMPANY to make Collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of COMPANY's employees while making Collections or to make reasonable accommodations regarding Container placement and point of delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make Collections, shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on COMPANY's cooperation in making Collection at different times and in different locations.

In addition to any and all other legal or equitable remedies, in the event that COMPANY, for any reason whatsoever, fails, refuses or is unable to perform any Collection Service at the time and in the manner provided in this Agreement, and if, as a result thereof, Solid Waste accumulates in the City to such an extent, in such a manner, or for such a time that the City Manager finds that such accumulation endangers or menaces the environment, public health, safety or welfare, then CITY shall have the right, but not the obligation, upon twenty-four (24) hours prior notice to COMPANY, to do either one or both of the following during the period of such emergency as determined by City Manager: (i) cause to be performed such services with other personnel without liability to COMPANY; (ii) to take possession of any or all of COMPANY's land, equipment and other property used or useful in providing one or more of the Collection Services and to provide one or more of the Collection Services. Should CITY take possession of COMPANY's equipment and other property pursuant to this Section, CITY shall

exercise reasonable, ordinary care in the use of the equipment and property. Any action by CITY pursuant to this Section shall be without payment to COMPANY.

Notice of COMPANY's failure, refusal or neglect to perform one or more Collection Services may be given orally by telephone to COMPANY at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to COMPANY within twenty-four (24) hours of the oral notification. COMPANY further agrees that in such event:

(a) It shall fully cooperate with CITY to affect the transfer of possession of property to CITY for CITY's use.

(b) It shall, if CITY so requests and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain the property in operational condition. If CITY takes possession of COMPANY'S equipment and causes the equipment to be operated in the performance of any one or more collection services, as herein contemplated, CITY shall ensure that operators of the equipment are experienced, knowledgeable, and licensed to operate the equipment taken possession of by CITY. CITY shall indemnify, defend, and hold COMPANY harmless from any and all liability, claims, damages, suits, costs, and expenses that arise out of or in any way relate to CITY'S use of COMPANY'S equipment or property except from liability, claims, damages, suits, costs, and expenses that are the result of defects in COMPANY'S equipment or property. Further, as a condition precedent to exercising any rights described herein, CITY shall provide COMPANY with evidence of insurance reasonably satisfactory to COMPANY that would cover CITY'S conduct of any one or more collection services that CITY undertakes pursuant to this section. Such insurance shall include general liability, automobile liability, and workers compensation insurance and each policy maintained by the CITY shall name COMPANY as additional insured. CITY shall also provide maintenance of equipment and property in accordance with standard industry practices during the period of its use and shall return equipment and property to COMPANY in substantially the same condition and repair as on the date CITY took possession, normal wear and tear expected.

CITY's exercise of its contractual rights under this Section does not constitute a taking of private property for which compensation must be paid; (ii) shall not create any liability on the part of CITY to COMPANY; and (iii) does not exempt COMPANY from the indemnity provisions of Section 11, which are meant to extend to circumstances arising under this Article, provided that COMPANY is not required to indemnify CITY against claims and damages that are solely caused by the established active negligence or willful misconduct of City officers, employees, agents, or volunteers acting under this Section. CITY shall not affect a permanent taking of COMPANY's property pursuant to this Section.

CITY's right to retain temporary possession of COMPANY's property, and to provide one or more Collection Services shall continue until COMPANY can demonstrate to CITY's satisfaction that it is ready, willing and able to resume such services. CITY has no obligation to maintain possession of COMPANY's property or continue its use in performing one or more

Collection Services for any period of time and may, at any time, in its sole discretion, relinquish possession to COMPANY.

Separate from or in addition to assessing liquidated damages, CITY may also at its sole discretion promptly secure, or direct COMPANY to promptly secure, at COMPANY's sole expense, substitute services, satisfactory to CITY, for when COMPANY is in breach, upon the same terms and conditions as provided in this Agreement.

Section 20. Franchise Termination

(A) All terms and specifications of this Agreement are material and binding, and failure to perform any portion of the work described herein shall be considered a breach of this Agreement. Failure or delay by either party to perform any term or provision of this Agreement constitutes a breach under this Agreement. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence.

(B) Except as set forth in Sections 2 (B) and 13 (C), neither party may exercise any rights or remedies upon a default by the other party, unless and until such default continues for a period of seven (7) days after written notice thereof from the non-defaulting party. If the nature of the default is such that more than seven (7) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if it has commenced a cure within the seven (7) day period and thereafter diligently prosecutes such cure to completion within thirty (30) days after receipt of written notice thereof. No such additional time to cure shall be allowed for failure to pay any amount due to either party under this Agreement, or if the nature of the default is such that the health, welfare, or safety of the public is endangered as determined by the City Manager. The notice of default shall specify the default complained of by the injured party. In the event of any conflict between the cure periods set forth in this subsection and any shorter cure periods set forth in an applicable Section of this Agreement, the shorter period shall control.

(C) Delay in giving a notice of default shall not constitute a waiver of any default nor shall it change the time of default. Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, nor deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(D) If the City Manager determines that COMPANY's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the Act (including, but not limited to requirements for Diversion, source reduction and Recycling as to the waste stream subject to this Agreement), or any other Applicable Law, including but not limited to, the laws governing transfer, storage or Disposal of Solid Waste or Hazardous Waste, the City Manager may advise COMPANY in writing of such suspected default in accordance with

subsection 20(B), specifying the default in reasonable detail (the “Notice of Default”), and including the time within which COMPANY is to cure the default and respond, in accordance with subsection 20(B). COMPANY may request additional time to cure the default; CITY shall not unreasonably deny any such request.

(i) The City Manager shall review any written response from COMPANY and decide the matter or refer the matter to the City Council for consideration pursuant to this Section. If the City Manager’s decision is adverse to COMPANY, the City Manager may order remedial actions to cure any deficiencies, or invoke any other remedy in accordance with this Agreement and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate this Agreement. The City Manager shall promptly inform COMPANY of the City Manager’s decision. In the event the decision is adverse to COMPANY, the City Manager shall inform COMPANY, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of this Agreement or other laws, for the City Manager’s decision and any remedial action taken or ordered. An adverse decision by the City Manager shall be final and binding on COMPANY unless COMPANY files a “Notice of Appeal” with the City Clerk (with copies to the City Manager and City Attorney) within seven (7) days of receipt of the notification of the adverse decision by the City Manager.

(ii) In any “Notice of Appeal” to the City Council, COMPANY shall state all of its factual and legal contentions, citing provisions of this Agreement or other laws to support its contentions. Within twenty-one (21) days of the filing of the Notice of Appeal with the City Clerk, COMPANY shall deliver to the City Clerk three (3) copies of all relevant affidavits, documents, photographs and videotapes that COMPANY may choose to submit.

(E) If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by COMPANY, the City Clerk shall set the matter for a hearing before the City Council. The City Clerk shall give COMPANY thirty (30) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the administrative record, including the following:

- (i) A staff report by the City Manager, summarizing the proceedings to date and outlining the City Council’s options;
- (ii) The City Manager’s written Notice of Default;
- (iii) COMPANY’s response to the Notice of Default;
- (iv) The City Manager’s written notification to COMPANY of adverse decision;
- (v) COMPANY’s Notice of Appeal to the City Clerk; and
- (vi) Any evidence submitted by COMPANY pursuant to paragraph (ii) of subsection 20(D).

No new legal issues may be raised, or new evidence submitted by COMPANY at this or at any further point in the proceedings, absent a showing of good cause. COMPANY's representatives and other interested persons shall be provided a reasonable opportunity to be heard.

(F) Based on the administrative record, the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld. A tie vote of the City Council shall be regarded as upholding the decision of the City Manager. If, based upon the administrative record, the City Council determines that the performance of COMPANY is in breach of any provision of the Agreement or of any applicable federal, State or local statute or regulation, the City Council, in the exercise of its discretion, may order COMPANY to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement, including but not limited to termination. The decision or order of the City Council shall be final and binding.

(G) COMPANY's performance under this Agreement is not excused during the period of time prior to a final determination as to whether or not COMPANY's performance is in material breach of this Agreement, or the time set by CITY for COMPANY to discontinue a portion or all of its services pursuant to this Agreement.

(H) CITY reserves the right to terminate this Agreement in the event that COMPANY fails to cure any default within the applicable cure periods, including but not limited to the following:

- (i) if COMPANY violates any material provision of any Applicable Law;
- (ii) if COMPANY fails to maintain the insurance or bonds required by Section 12, or fails to pay to CITY any monies due CITY pursuant to this Agreement, and fails to remedy such default within five (5) days after written notice thereof from CITY;
- (iii) there is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating equipment of COMPANY, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair COMPANY's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;
- (iv) COMPANY fails to provide reasonable assurances of performance;
- (v) COMPANY fails to notify CITY in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, and Green Waste/Food Waste Collection, transportation, Processing or Disposal activities, or street sweeping activities;
- (vi) If COMPANY violates any orders or filings of any regulatory body having jurisdiction over COMPANY relative to this Agreement, provided that COMPANY may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no

breach of this Agreement shall be deemed to have occurred until a final decision adverse to COMPANY is entered;

(vii) if COMPANY ceases to provide Collection service as required under this Agreement over all or a substantial portion of the area within the City, for a period of two (2) days or more, for any reason within the control of COMPANY, including but not limited to labor disputes;

(viii) if COMPANY fails to make any payment required under this Agreement and/or refuses to provide CITY with required information, reports, and/or records in a timely manner as provided for in this Agreement;

(I) Notwithstanding Sections 20 (A), 20(B) and 20(c), CITY reserves the right to terminate this Agreement, without the need to provide COMPANY an opportunity to cure, in the event of any of the following:

(i) if COMPANY practices, or attempts to practice, any fraud or deceit upon CITY, or practiced any fraud or deceit or made any misrepresentations in the negotiations which preceded the execution of this Agreement;

(ii) if COMPANY has received three (3) or more written Notices of Default in any twelve (12) month period, irrespective of whether or not the act or omission set forth in the notice was corrected or remedied within the time set forth in the notice, but excluding notices where, after investigation, the City Manager or City Council has determined that no default occurred, and also excluding notices relating to matters that are trivial.

Section 21. Compliance With Laws and Regulations

COMPANY shall comply with all applicable laws, including implementing regulations, as they may be amended from time to time, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. Sections 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., the California Integrated Waste Management Act of 1989, all applicable air pollution control laws, and all other applicable laws of the United States of America, the State of California, the County of Santa Clara, ordinances of the City, the requirements of Local Enforcement Agencies and other agencies with jurisdiction.

Section 22. Definitions

Whenever any term used in this Agreement has been defined by Section 13.28 of Chapter 13 of the Morgan Hill Municipal Code, the definitions in Chapter 13 shall apply unless the term is otherwise defined in this Agreement. Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in Division 30, Part 1, Chapter 2 shall apply, unless the term is otherwise defined in this Agreement or in Chapter 13 of the Municipal Code. In addition, the following definitions are hereby incorporated into this Agreement:

22.1 “Act” shall have the meaning set forth in the first recital of this Agreement.

22.2 “Applicable Law” means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection and disposition of Solid Waste and Recyclables that are in force on the Date of this Agreement and as they may be enacted, issued or amended during the Term.

22.3 “CERCLA” means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

22.4 “Change in Law” means any of the following events or conditions, which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations):

(a) the enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the date of this Agreement; or

(b) the order or judgment of any governmental body, on or after the date of this Agreement, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of CITY or of COMPANY, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

22.5 “City Code” means the Code of the City of Morgan Hill, California, as it presently exists or may subsequently be amended.

22.6 “City Facility” means: City Hall, Civic Center Complex, Community Center, Playhouse, Police Department, Public Works Department, Aquatics Complex, Indoor Recreation Center, Outdoor Sports Complex, Corporation Yard, City parks, rights of way, and any other facility or real property used primarily by the CITY that may be constructed, acquired or leased during the

Term.

22.7 “CIWMB” means the California Integrated Waste Management Board.

22.8 “Collection Services” means all of the duties and obligations of COMPANY hereunder.

22.9 “Compost” shall have the meaning set forth in Public Resources Code Section 40116, as it now exists or may subsequently be amended.

22.10 “Consumer Price Index” or “CPI” means the Consumer Price Index (CPI) – All Urban Consumers for the San Francisco - Oakland - San Jose Metropolitan Area, base period 1982-84=100.

22.11 “Control” means, for purposes of this Agreement, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, or other association.

22.12 “Diversion” means diversion as defined in Public Resources Code §40124.

22.13 “Diversion Rate” means the percent of Solid Waste diverted from Disposal.

22.14 “Environmental Statutes” means, for the purposes of this Agreement, 42 U.S.C. Sections 6901, *et seq.* and Sections 9600, *et seq.*, and California Health and Safety Code Sections 25300, *et seq.*, or successor statutes.

22.15 “Food Waste” means vegetable and fruit matter, grain products and baked goods, egg shells, coffee grounds, meat, bones, fish, and other putrescible kitchen wastes. “Food Waste” does not include manure and pet wastes, dead animals, or rotten material.

22.16 “Green Waste/Food Waste” means comingled Green Waste and Food Waste.

22.17 “Gross Rate Revenues” means all Rate revenues collected by COMPANY for providing Collection Services.

22.18 “Household Hazardous Waste Program” means the operation of the Household Hazardous Waste collection facility and provision of services.

22.19 “Owner” means the person holding the legal title or having a right to possession to the real property to which Collection Services are provided.

22.20 “Rates” means the service charges and Special Charges for Collection Services charged to each Subscriber receiving service under this Agreement.

22.21 “Related Party” means any other Person under the same ownership and/or Control as South Valley Disposal and Recycling, Inc.

22.22 “Residue” means materials that remain after Processing Recyclables and Green Waste/Food Waste, which cannot be recycled, marketed, or otherwise utilized, including but not limited to materials such as rocks, contaminated paper, putrescible waste, and other debris.

22.23 “Schedule of Approved Rates” means Exhibit A.

22.24 “Special Charges” means extra charges for certain special services for Residential and Commercial/Industrial Subscribers that are contained on the Schedule of Approved Rates, and that may be billed by COMPANY.

22.25 “Standard Residential Green Waste/Food Waste Container” means a Standard Residential Green Waste Container that is provided by COMPANY for the collection of comingled Green Waste and Food Waste from Residential Premises.

22.26 “State” means the State of California.

22.27 “Street Sweeping Fines” means material collected as a result of street sweeping operations.

22.28 “Subscriber” means an individual or entity that subscribes to Collection Services provided by COMPANY pursuant to this Agreement.

22.29 “Substantial Evidence” means such evidence as would convince a reasonable person and on which reasonable persons may not reasonably differ as to the conclusion to be drawn from such evidence.

22.30 “Term” means the term of this Agreement, as set forth in Section 2.

\
\
\
\
\
\
\
\
\
\

22.31 “Tipping Fee” means the fee charged by a Disposal or Processing facility to dispose or process one (1) Ton of municipal Solid Waste, not including any charges for Special Wastes, Bulky Waste, or Special Items.

22.32 “Ton” means a “short ton” of 2,000 pounds.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

ATTEST:

THE CITY OF MORGAN HILL

City Clerk

Date: _____

City Manager

Date: _____

APPROVED:

“COMPANY”

Risk Manager

Date: _____

By:

Date: _____

APPROVED AS TO FORM:

City Attorney

Date: _____

EXHIBIT B

INSURANCE REQUIREMENTS

COMPANY shall procure and maintain for the duration of the franchise agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the COMPANY, his agents, representatives, employees or subcontractors. With respect to General Liability, Errors & Omissions and Pollution and/or Asbestos Pollution Liability coverage should be maintained for a minimum of five (5) years after the franchise agreement expires.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001 or Claims Made Form CG 0002).
2. Insurance Services Office Form No. CA 0001, covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
4. Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions.

Minimum Limits of Insurance

COMPANY shall maintain limits no less than:

- | | |
|--|---|
| 1. General Liability:
(Including operations, products and completed operations, as applicable.) | \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| 2. Automobile Liability: | \$2,000,000 per accident for bodily injury and property damage. |
| 3. Employer's Liability: | \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, \$1,000,000 each employee bodily injury by disease. |
| 4. Pollution and/or Asbestos Pollution Liability and/or Errors and Omissions: | \$1,000,000 each occurrence/ \$2,000,000 policy aggregate. |

Deductible and Self Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. If possible, the Insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Entity, its officers, officials, employees and volunteers; or the COMPANY shall provide evidence satisfactory to the Entity guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions

- A. The General Liability, Automobile Liability, Pollution and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:
 - 1. The Entity, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the COMPANY; and with respect to liability arising out of work or operations performed by or on behalf of the COMPANY including materials, parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.
 - 2. For any claims related to this project, the COMPANY's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, agents or volunteers shall be excess of the COMPANY's insurance and shall not contribute with it.
 - 3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the Entity.
 - 4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- B. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.
- C. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:
 - 1. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
 - 2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, the COMPANY must purchase "extended reporting" coverage for a minimum of five (5) years after expiration of the franchise.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI if admitted. If pollution and/or Asbestos Pollution and/or errors and omissions coverages are not available from an "Admitted" insurer, the coverage may be written by a Nonadmitted insurance company. A Nonadmitted company should have an A.M. Best's rating of A:X or higher. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

Verification of Coverage

COMPANY shall furnish the Entity with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the Entity, unless the insurance company will not use the Entity's form. All endorsements are to be received and approved by the Entity before work commences. As an alternative to the Entity's forms, the COMPANY's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

Subcontractors

COMPANY shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

SOUTH VALLEY DISPOSAL AND RECYCLING, INC.
CITY OF MORGAN HILL
RATES EFFECTIVE OCTOBER 1, 2005

DESCRIPTION	Current Rates	Add 3.29%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	21.12	0.70	21.82
SGL FAM - NO STREET SWEEPING	20.85	0.69	21.54
HILLSIDE RESIDENTIAL	23.01	0.76	23.77
HILLSIDE RESIDENTIAL - NO SWEEPING	22.68	0.75	23.43
LOW INCOME	16.90	0.56	17.46
LOW INCOME - NO ST SWEEPING	16.68	0.55	17.23
BULKY MATERIAL (1-3 ITEMS)	28.59	0.94	29.53
BULKY MATERIAL (EACH EXTRA ITEM)	11.42	0.38	11.80
SIDE/BACKYARD SERV	8.57	0.28	8.85
GARBAGE Toter RENTAL	3.64	0.12	3.76
RETURNED TRIP COLLECTION	22.37	0.74	23.11

2.72%

<u>Commercial Rates</u>			
1 CAN COMM	13.29	0.36	13.65
2 CANS COMM	21.79	0.59	22.38
3 CANS COMM	30.33	0.82	31.15
4 CANS COMM	38.87	1.06	39.93
5 CANS COMM	47.40	1.29	48.69
6 CANS COMM	55.95	1.52	57.47
7 CANS COMM	64.45	1.75	66.20
8 CANS COMM	72.97	1.98	74.95
9 CANS COMM	81.51	2.21	83.72
10 CANS COMM	90.05	2.45	92.50
2 YD 1 X WEEK	164.96	4.48	169.44
2 YD 2 X WEEK	312.80	8.50	321.30
2 YD 3 X WEEK	460.60	12.51	473.11
2 YD 4 X WEEK	608.43	16.53	624.96
2 YD 5 X WEEK	756.22	20.55	776.77
2 YD 6 X WEEK	902.95	24.53	927.48
1/2 3 YD 1 X WEEK	119.49	3.25	122.74
3 YD 1 X WEEK	238.97	6.49	245.46
3 YD 2 X WEEK	455.09	12.36	467.45
3 YD 3 X WEEK	671.21	18.24	689.45
3 YD 4 X WEEK	887.33	24.11	911.44
3 YD 5 X WEEK	1,103.43	29.98	1,133.41
3 YD 6 X WEEK	1,319.55	35.85	1,355.40
4 YD 1 X WEEK	309.21	8.40	317.61
4 YD 2 X WEEK	587.64	15.97	603.61
4 YD 3 X WEEK	866.09	23.53	889.62

SOUTH VALLEY DISPOSAL AND RECYCLING, INC.
CITY OF MORGAN HILL
RATES EFFECTIVE OCTOBER 1, 2005

DESCRIPTION	Current Rates	Add 3.29%	New Rates
4 YD 4 X WEEK	1,144.54	31.10	1,175.64
4 YD 5 X WEEK	1,422.97	38.66	1,461.63
4 YD 6 X WEEK	1,701.42	46.23	1,747.65
6 YD 1 X WEEK	462.00	12.55	474.55
6 YD 2 X WEEK	884.17	24.02	908.19
6 YD 3 X WEEK	1,306.33	35.49	1,341.82
6 YD 4 X WEEK	1,728.51	46.96	1,775.47
6 YD 5 X WEEK	2,150.69	58.43	2,209.12
6 YD 6 X WEEK	2,572.85	69.90	2,642.75
SPECIAL COLLECTION	18.97	0.52	19.49
REGULAR COMPACTOR (PER YARD)	29.99	0.81	30.80
RECYCLE COMPACTOR (PER YARD)	17.73	0.48	18.21
SUPER COMPACTOR (PER YARD)	59.97	1.63	61.60
20 YARD DEBRIS BOX	330.07	8.97	339.04
35 YARD DEBRIS BOX	471.54	12.81	484.35
40 YARD DEBRIS BOX	550.14	14.95	565.09
PERM RENTAL	174.88	4.75	179.63
PERM DISPOSAL (PER YARD)	16.45	0.45	16.90
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	168.72	4.58	173.30
40 YARD OTHER RECYCLABLES	281.24	7.64	288.88
20 YARD DEBRIS BOX HILLSIDE	411.55	11.18	422.73
40 YARD DEBRIS BOX HILLSIDE	631.34	17.15	648.49
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	259.91	7.06	266.93
2 YARD COMPACTOR 2 X WEEK	519.82	14.12	533.86
2 YARD COMPACTOR 3 X WEEK	779.73	21.18	800.79
3 YARD COMPACTOR 1 X WEEK	389.87	10.59	400.40
3 YARD COMPACTOR 2 X WEEK	779.73	21.18	800.79
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	519.74	14.12	533.86
2 YARD COMPACTOR 2 X WEEK	1,039.47	28.24	1,067.73
2 YARD COMPACTOR 3 X WEEK	1,559.21	42.36	1,601.59
3 YARD COMPACTOR 1 X WEEK	779.60	21.18	800.79
3 YARD COMPACTOR 2 X WEEK	1,559.21	42.36	1,601.59
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00



CITY COUNCIL/REDEVELOPMENT

AGENCY MEETING DATE: July 6, 2005

Agenda Item #18

Approved By:

BAHS Director

Submitted By:

Executive Director

DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) WITH EL TORO BREWING

RECOMMENDED ACTION(S): 1) Open/Close Public Hearing and 2) Adopt resolutions approving the DDA and authorizing the Executive Director to execute the agreement including making non-material modifications subject to Agency Council review.

EXECUTIVE SUMMARY: On January 21, 2004, the Redevelopment Agency (Agency) selected El Toro Brewing Company (El Toro) as the developer for a restaurant/brew pub in the police building at 17605 Monterey Road. The project is to act as a catalyst/gateway project for the downtown. Since that time, the Agency has approved two extensions to the ERN. In January 2005, the Agency approved the 2nd amendment to the ERN which extended the ERN to June 24, 2005 with provisions for administrative extensions. The current extension is to July 25, 2005. With respect to the status of the project, El Toro's lender is processing its construction loan request and anticipates closing the loan on July 11, 2005. El Toro anticipates resubmitting its plans in response to initial plan check comments in early July.

The following are the key terms of the DDA:

- El Toro is to purchase the building for \$650,000. Attached is the financial summary of the transaction. The building was appraised for \$880,000 due to its functional obsolescence and the need for rehabilitation. The appraisal estimated that the building would require \$400,000 in improvements to convert it to a multi-tenant office building. However, the Agency's requirement is that the building be converted into a restaurant/brew pub. The estimated improvements will cost over a \$1M which is \$600,000 more than for an office building. If you reduce the \$880,000 appraised value by \$600,000, the result is a value of \$280,000 which is substantially less than the purchase price.
- El Toro must operate a restaurant for at least five years.
- Construction financing must be secured by July 25, 2005.
- El Toro must pull building permits by September 30, 2005. This is different from the ERN which set July 8th as the deadline, but allowed for extensions to Oct 30th. To better reflect the status of the project, we are recommending that the deadline be Sept 30th for pulling permits without any extensions unless a delay is caused by City staff.
- Escrow to close no later than September 30, 2005.
- Construction to begin within 30 days after pulling building permits.
- Construction to be completed 9 months from pulling building permits, but no later than Sept. 30, 2006.
- Restaurant/brew pub in operation within 12 months of pulling building permits, but no later than December 2006.

FISCAL IMPACT: Pursuant to the ERN, El Toro has now deposited \$60,000, of which \$40,000 is non-refundable, into escrow toward the purchase price. The Agency will receive \$650,000 from the sale. This \$650,000 was identified as one of the funding sources for the library project.

RESOLUTION NO. MHRA - ____

**A RESOLUTION OF THE MORGAN HILL
REDEVELOPMENT AGENCY APPROVING A
DISPOSITION AND DEVELOPMENT AGREEMENT
WITH HUNTINGTON BEACH BREWING
COMPANY**

RECITALS

WHEREAS, in order to effectuate the provisions of the Community Development Plan (the "Redevelopment Plan") for the Ojo de Agua Community Development Project (the "Project Area"), originally adopted by City Ordinance No. 552 on June 3, 1981, and as amended and restated by the Amendment to the Community Development Plan for the Ojo de Agua Community Development Project adopted by City Ordinance No. 1429 N.S. on May 5, 1999, the Morgan Hill Redevelopment Agency (the "Agency") proposes to enter into a Disposition and Development Agreement ("DDA") with Huntington Beach Brewing Company, a California corporation, doing business as El Toro Brewing, (the "Developer") to acquire and renovate the former police station ("PD building") located at 17605 Monterey Rd. in Morgan Hill, California for a restaurant/brew pub use; and

WHEREAS, the City Council of the City of Morgan Hill has previously determined that the Project Area is an area in which the combination of conditions of blight is so prevalent and so substantial that there is a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical, social and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment. Among other things, the Project Area contains vacant and underutilized properties, properties which suffer from economic dislocation, deterioration or disuse, including depreciated or stagnant property values and impaired investments, and aged and obsolete buildings. Such conditions tend to further deterioration and disuse because of the lack of incentive to landowners and their inability to improve, modernize or rehabilitate their property while the condition of the neighboring property remains unchanged. The Project Area is characterized by the existence of inadequate open spaces, public improvements and public facilities, including inadequate community facilities, which cannot be remedied by private or governmental action without redevelopment. The renovation of the PD building into 10,000 sq. ft. restaurant/brew pub by the Developer will assist in the elimination of one or more blighting conditions inside the Project Area. The PD building is a key catalyst project in the downtown area located at the northern gateway to Downtown Morgan Hill. The renovation of the PD building and conversion to a restaurant/brew pub use will enhance a major entryway to the City, encouraging private sector investment in the Project Area, thereby facilitating and accelerating the redevelopment of the Project Area. The renovation will also prevent the further deterioration of a functionally obsolete and dilapidated building which has been vacant for a year. The proposed transactions contemplated by the DDA will thereby assist in the elimination of conditions of blight within the Project Area and will encourage private-sector investment in the Project Area, thereby facilitating the redevelopment of the Project Area; and

WHEREAS, the Agency pursuant to the DDA will sell the PD building for \$650,000 to the Developer for the renovation and conversion to a restaurant/brew; and

WHEREAS, Health and Safety Code Section 33433 requires that the City Council approve the sale of any property acquired in whole or in part, directly or indirectly, with tax increment moneys for development pursuant to the Redevelopment Plan; and

WHEREAS, Health and Safety Code Section 33433 also requires that a Summary Report be made available for public inspection; and

WHEREAS, the Summary Report has been made available for public inspection in the manner required by Section 33433;

WHEREAS, notice of a joint public meeting to be held by the City Council and the Agency regarding the approval for the DDA has been duly given in the manner required by law;

NOW, THEREFORE, based on the evidence presented to the Agency, including the written staff report and oral testimony in this matter, and the Summary Report prepared pursuant to Section 33433 of the California Health and Safety Code, the Morgan Hill Redevelopment Agency does hereby find, determine, resolve and order as follows:

Section 1. The DDA will assist in the elimination of blight in the Project Area and is consistent with the implementation plan for the Project Area adopted pursuant to Health and Safety Code Section 33490.

Section 2. The consideration for the DDA is not less than the fair market value of the Site at its highest and best use in accordance with the Implementation Plan.

Section 3. The Agency hereby approves the DDA and hereby directs its Executive Director and/or any other authorized officers to take such actions, perform such deeds and execute, acknowledge and deliver such instruments and documents as it deems necessary in connection therewith, including making non-material modifications subject to Agency legal review.

PASSED AND ADOPTED by the Morgan Hill Redevelopment Agency at a Special Meeting held on the 6th Day of July, 2005 by the following vote:

AYES:	AGENCY MEMBERS:
NOES:	AGENCY MEMBERS:
ABSTAIN:	AGENCY MEMBERS:
ABSENT:	AGENCY MEMBERS:

🏛️ CERTIFICATION 🏛️

I, **IRMA TORREZ, AGENCY SECRETARY**, do hereby certify that the foregoing is a true and correct copy of Resolution No. MHRA- adopted by the Morgan Hill Redevelopment Agency at a Special Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ
AGENCY SECRETARY

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT WITH HUNTINGTON BEACH BREWING COMPANY

RECITALS

WHEREAS, in order to effectuate the provisions of the Community Development Plan (the "Redevelopment Plan") for the Ojo de Agua Community Development Project (the "Project Area"), originally adopted by City Ordinance No. 552 on June 3, 1981, and as amended and restated by the Amendment to the Community Development Plan for the Ojo de Agua Community Development Project adopted by City Ordinance No. 1429 N.S. on May 5, 1999, the Morgan Hill Redevelopment Agency (the "Agency") proposes to enter into a Disposition and Development Agreement ("DDA") with Huntington Beach Brewing Company, a California corporation, doing business as El Toro Brewing, (the "Developer") to acquire and renovate the former police station ("PD building") located at 17605 Monterey Rd. in Morgan Hill, California for a restaurant/brew pub use; and

WHEREAS, the City Council of the City of Morgan Hill has previously determined that the Project Area is an area in which the combination of conditions of blight is so prevalent and so substantial that there is a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical, social and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment. Among other things, the Project Area contains vacant and underutilized properties, properties which suffer from economic dislocation, deterioration or disuse, including depreciated or stagnant property values and impaired investments, and aged and obsolete buildings. Such conditions tend to further deterioration and disuse because of the lack of incentive to landowners and their inability to improve, modernize or rehabilitate their property while the condition of the neighboring property remains unchanged. The Project Area is characterized by the existence of inadequate open spaces, public improvements and public facilities, including inadequate community facilities, which cannot be remedied by private or governmental action without redevelopment. The renovation of the PD building into 10,000 sq. ft. restaurant/brew pub by the Developer will assist in the elimination of one or more blighting conditions inside the Project Area. The PD building is a key catalyst project in the downtown area located at the northern gateway to Downtown Morgan Hill. The renovation of the PD building and conversion to a restaurant/brew pub use will enhance a major entryway to the City, encouraging private sector investment in the Project Area, thereby facilitating and accelerating the redevelopment of the Project Area. The renovation will also prevent the further deterioration of a functionally obsolete and dilapidated building which has been vacant for a year. The proposed transactions contemplated by the DDA will thereby assist in the elimination of conditions of blight within the Project Area and will encourage private-sector investment in the Project Area, thereby facilitating the redevelopment of the Project Area; and

WHEREAS, the Agency pursuant to the DDA will sell the PD building for \$650,000 to the Developer for the renovation and conversion to a restaurant/brew; and

WHEREAS, Health and Safety Code Section 33433 requires that the City Council approve the sale of any property acquired in whole or in part, directly or indirectly, with tax increment moneys for development pursuant to the Redevelopment Plan; and

WHEREAS, Health and Safety Code Section 33433 also requires that a Summary Report be made available for public inspection; and

WHEREAS, the Summary Report has been made available for public inspection in the manner required by Section 33433;

WHEREAS, notice of a joint public meeting to be held by the City Council and the Agency regarding the approval for the DDA has been duly given in the manner required by law;

NOW, THEREFORE, based on the evidence presented to the City Council, including the written staff report and oral testimony in this matter, and the Summary Report prepared pursuant to Section 33433 of the California Health and Safety Code, the City Council of the City of Morgan Hill does hereby find, determine, resolve and order as follows:

Section 1. The DDA will assist in the elimination of blight in the Project Area and is consistent with the implementation plan for the Project Area adopted pursuant to Health and Safety Code Section 33490.

Section 2. The consideration for the DDA is not less than the fair market value of the Site at its highest and best use in accordance with the Implementation Plan.

Section 3. The City Council hereby approves the DDA and hereby authorizes the Agency to take such actions, perform such deeds and execute, acknowledge and deliver such instruments and documents as it deems necessary in connection therewith, including making non-material modifications subject to Agency counsel review.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 6th Day of July, 2005 by the following vote.

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

🦉 CERTIFICATION 🦉

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a Regular Meeting held on July 6, 2005.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: July 6, 2005

Agenda Item # 19

**Prepared & Submitted
By:**

City Manager

RECRUITMENT OF CITY ATTORNEY

RECOMMENDED ACTION(S):

1. Consider whether to recruit for a full time City Attorney, and
2. Provide direction on the process and schedule.

EXECUTIVE SUMMARY:

The adopted budget for FY 06 provides for continuation of contract City Attorney services through September 30, 2005, and appointment of a full time City Attorney thereafter.

Councilmember Grzan requested that the Council discuss the schedule and process leading to appointment of a full time City Attorney.

Attached is the staff report from the May 4, 2005 City Council meeting for background.

Here are some policy questions the Council may wish to consider:

- Does the Council wish to provide for City Attorney services at a higher level than currently provided by contract?
- Should additional services be provided by expanding the contract? or by employment of a full time City Attorney?
- If by contract, does the Council wish to obtain proposals from law firms?
- If a full time City Attorney is preferred, does the Council wish to retain the services of an executive search firm to assist with preparation of the candidate profile and recruitment?

It is anticipated a recruitment and selection process will take at least 90 days.

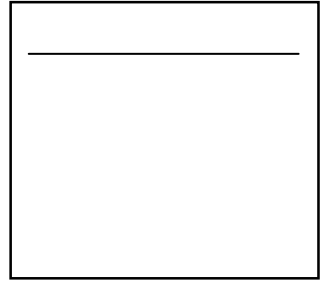
FISCAL IMPACT:

Contract City Attorney services are currently provided by Jorgensen, Siegel, McClure and Flegel, LLP at an approximate cost of \$23,000 per month. Salary and benefits for a full time City Attorney are budgeted at a little less than \$20,000 per month. The cost of an executive search firm should not exceed the \$20,000 that has been included in the budget.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 4, 2005



CITY ATTORNEY SERVICES

RECOMMENDED ACTION(S):

Provide direction to staff on additional information or analysis needed to support Council's decision on future City Attorney Services.

EXECUTIVE SUMMARY:

The law firm of Jorgenson, Siegel, McClure & Flegel is currently providing City Attorney services under contract. Based on the current level of services, it is anticipated the costs will be approximately \$20,000 per month for general municipal law services.

In order to recruit and retain a full time city employee to serve as City Attorney, the process would require a minimum of 90 days.

Attached is a staff report from February 2000 outlining a series of issues involved in determining whether to pursue recruitment or a contract with a full service municipal law firm.

The Mayor requested that this matter be agendaized to provide Council an opportunity to initiate a discussion about the scope and level of services expected.

FISCAL IMPACT:

The City Manager's Recommended Budget for FY 06 will include funds for a full time City Attorney beginning October 1, 2005.



CITY COUNCIL STAFF REPORT

MEETING DATE: *July 6, 2005*

BOARD AND COMMISSION INTERVIEW & APPOINTMENT PROCESS

RECOMMENDED ACTION(S): Consider the Mayor's Fundamental Principles to Guide the Board & Commission Recruitment, Interview & Appointment Process.

EXECUTIVE SUMMARY:

At the June 15, 2005 meeting, the Council discussed its current interview and appointment process. The following concerns were raised about the current process:

- A small applicant pool may result in the appointment of less qualified board or commission member (suggested that an applicant receive a minimum passing score to be considered for appointment)
- On occasion, many outstanding/qualified applicants to choose from
- No lapse in time from the interview to the appointment process to allow consideration of the interview results
- Appointment of residents who reside outside the City Limits to boards and commissions when there are qualified residents who reside within the City Limits to select/appoint
- Delay in appointments may result in politics/lobbying
- City struggles to recruit citizens to serve on the various boards and commissions
- Interviews should not be the sole basis for appointment; other factors to be taken into consideration
- Controversies associated with not reappointing incumbents
- Applicants should be given the opportunity to respond to the same questions

Mayor Kennedy offered, and Council directed, that he meet with the City Manager and the Council Services & Records Manager; returning to the Council with recommended fundamental principles for the recruitment, interview and appointment process that would address most of the concerns raised.

On Friday, June 17, Mayor Kennedy, City Manager Tewes and Council Services & Records Manager Torrez met to discuss alternatives to the current interview and appointment process. Attached to the staff report are the Mayor's fundamental principles for a "recruitment, interview and appointment process."

The Mayor, subject to Council ratification, makes appointments for all boards and commissions. The Parks & Recreation Commission is the appointing body for the Bicycle & Trails Advisory Committee and the Senior Advisory Committee. The applications usually include a couple of questions relative to a board or commission's general charge. If there are questions that Council Members would like to include in the applications, please be prepared to identify them at the meeting. Staff will incorporate the questions into the respective applications. Attached, are the various applications to Boards, Commission & Committees for Council reference.

FISCAL IMPACT: No budget adjustment required.

Agenda Item #20

Prepared By:

Council Services & Records Manager:

Submitted By:

City Manager

RECOMMENDED FUNDAMENTAL PRINCIPLES FOR A RECRUITMENT, INTERVIEW AND APPOINTMENT PROCESS

1. Conduct active outreach for candidates
2. Council discussion of expectations of Board, Commission or Committee members
3. Application questionnaire to focus on Council expectations
4. Council to conduct interviews
5. Individual council members have the opportunity to suggest top candidates
6. Mayor should have at least one week to consider Council suggestions and other factors, including the need for continuity, match up candidates with needs, etc.
7. Mayor makes appointments subject to Council ratification, after further Council discussion.

The specific process is as follows:

- Council to identify specific questions to be included in the Board, Commission, or Committee applications relative to their charge
- Include a question for incumbents to inquire whether they are currently serving as chair/vice-chair, next in line to serve as chair/vice-chair to the board or commission, and/or are assigned to a special project
- Council to conduct interviews and ask clarifying questions.
- Applicants to be excused
- Council to discuss the characteristics it is looking for in a candidate (e.g., new voice, experience, etc.)
- Each Councilmember would identify their top candidates to fill vacancies plus one (see attached example to be explained by Mayor at the July 6 meeting)
- Mayor to consider Council members' top candidates; returning to the Council at a following meeting with a recommended appointment(s)
- Council to discuss recommended appointment(s)
- Council ratifies the Mayor's appointment

**DENNIS KENNEDY, MAYOR
JUNE 2005**

EXAMPLE OF ALTERNATIVE INTERVIEW/APPOINTMENT BALLOT PROCESS

There are 3 vacancies on the Planning Commission. Please identify your top 3 candidates plus 1 additional individual.

	Carr	Grzan	Kennedy	Sellers	Tate	Recommended Appointments
Applicant 1	X		X			2 top candidate votes received
Applicant 2		X	X	X	X	4 top candidate votes received
Applicant 3	X	X		X	X	4 top candidate votes received
Applicant 4		X	X	X		3 top candidate votes received
Applicant 5	X	X	X	X	X	5 top candidate votes received
Applicant 6	X				X	2 top candidate votes received

Mayor evaluates the Council's top candidate recommended appointments, taking into consideration other factors before returning to the Council with a recommendation (e.g., is an applicant serving as chair, is assigned to a special project, is familiar with local governance, etc.)

Should the Council not support this alternative recruitment, interview and appointment fundamental principles, the Council can retain its current interview and appointment process, appointing candidates based on ranking. (See attached 6/15/05 City Council staff report.)